

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TENNESSEE  
3 GREENEVILLE

4 UNITED STATES OF AMERICA, . DOCKET NO. CR-2-19-14  
5 GOVERNMENT, .  
6 VS. . GREENEVILLE, TN  
7 XIAORONG YOU, . MAY 9, 2022  
8 DEFENDANT. . 9:00 A.M.  
9 . . . . .

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11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE J. RONNIE GREER  
13 UNITED STATES DISTRICT JUDGE  
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1 APPEARANCES:

2 FOR THE GOVERNMENT:

U.S. DEPARTMENT OF JUSTICE  
OFFICE OF U.S. ATTORNEY  
MAC D. HEAVENER, III, AUSA  
220 WEST DEPOT STREET, SUITE 423  
GREENEVILLE, TN 37743

5 U.S. DEPARTMENT OF JUSTICE  
6 COMPUTER CRIME AND INTELLECTUAL  
PROPERTY SECTION  
7 MATTHEW R. WALCZEWSKI, AUSA  
950 PENNSYLVANIA AVENUE N.W.  
8 ROOM 3509  
WASHINGTON, D.C. 20530.

9 NICHOLAS O. HUNTER  
10 U.S. DEPARTMENT OF JUSTICE  
(NATIONAL SECURTY)  
11 NATIONAL SECURTY DIVISION,  
COUNTERTERRORISM SECTION  
12 950 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, DC 20530

13 FOR THE DEFENDANT:

COLLINS SHIPLEY, PLLC  
COREY B. SHIPLEY, ESQ.  
14 MICHAEL CURTIS COLLINS, ESQ.  
KRISTEN CONNER BLAIR, ESQ.  
15 128 SOUTH MAIN STREET, SUITE 102  
16 GREENEVILLE, TN 37743

17  
18  
19  
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21  
22 COURT REPORTER:

KAREN J. BRADLEY  
RPR-RMR  
U.S. COURTHOUSE  
220 WEST DEPOT STREET  
24 GREENEVILLE, TN 37743

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT  
PRODUCED BY COMPUTER.

1 (CALL TO ORDER OF THE COURT AT 9:00 A.M.)

2 THE COURT: GOOD MORNING.

3 ALL RIGHT. MS. HOPSON, WOULD YOU CALL THE  
4 CASE, PLEASE.

5 THE CLERK: USA VERSUS XIAORONG YOU, CASE  
6 NUMBER 2:19-CR-14.

7 THE COURT: ALL RIGHT. SINCE WE WERE HERE THE  
8 LAST TIME THERE HAS BEEN A SECOND ADDENDUM TO THE  
9 PRESENTENCE REPORT. FOR THE RECORD, MR. SHIPLEY, LET ME  
10 CONFIRM THAT YOU HAVE RECEIVED AND READ A COPY OF THAT  
11 SECOND ADDENDUM?

12 MR. SHIPLEY: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: AND HAVE YOU REVIEWED IT AND  
14 DISCUSSED IT WITH THE DEFENDANT?

15 MR. SHIPLEY: YES, YOUR HONOR, I HAVE.

16 THE COURT: ALL RIGHT. THANK YOU.

17 AND, DR. YOU, HAVE YOU ALSO RECEIVED AND READ A  
18 COPY OF THIS SECOND ADDENDUM TO THE PRESENTENCE REPORT?

19 THE DEFENDANT: YES, YOUR HONOR.

20 THE COURT: AND HAVE YOU REVIEWED IT AND  
21 DISCUSSED IT FULLY WITH YOUR ATTORNEY?

22 THE DEFENDANT: YES, YOUR HONOR.

23 THE COURT: AND HAVE YOU HAD SUFFICIENT TIME TO  
24 DO THAT?

25 THE DEFENDANT: DO WHAT?

1 THE COURT: HAVE YOU HAD SUFFICIENT TIME TO DO  
2 THAT?

3 THE DEFENDANT: YES.

4 THE COURT: ALL RIGHT. THANK YOU.

5 ALL RIGHT. COUNSEL, WHEN WE WERE HERE THE LAST  
6 TIME, WE HEARD ORAL ARGUMENT ON THE PRIMARY OBJECTION TO  
7 THE PRESENTENCE REPORT. THE COURT HAS NOW FILED AN ORDER  
8 RESOLVING THE LOSS ISSUE, I GUESS OVERRULING THE  
9 GOVERNMENT'S OBJECTION TO THE LOSS CALCULATION IN THE  
10 PRESENTENCE REPORT, ESTABLISHING A, AN ENHANCEMENT OF 24  
11 LEVELS RATHER THAN 26, RESULTING IN A TOTAL OFFENSE LEVEL  
12 BASED ON THAT CHANGE OF 39; AND THERE'S STILL, I THINK,  
13 MR. SHIPLEY, AT LEAST ONE GUIDELINE OBJECTION OUT-  
14 STANDING, AM I CORRECT ABOUT THAT, THE OBSTRUCTION  
15 ENHANCEMENT, OR DID WE DEAL WITH THAT ONE?

16 MR. SHIPLEY: YES, SIR, I THINK THAT'S  
17 CORRECT.

18 THE COURT: ALL RIGHT. THEN LET ME HEAR YOU ON  
19 THAT OBJECTION.

20 MR. SHIPLEY: COULD YOU GIVE ME ONE MOMENT,  
21 YOUR HONOR?

22 THE COURT: I'M SORRY?

23 MR. SHIPLEY: COULD YOU GIVE JUST ONE MOMENT,  
24 PLEASE?

25 THE COURT: YES.

1 MR. WALCZEWSKI: JUDGE, IF I MIGHT, ACCORDING  
2 TO MY NOTES, AT LEAST, WHICH MIGHT BE INCORRECT, I THOUGHT  
3 WE RESOLVED THE 3C1.1 OBSTRUCTION.

4 THE COURT: WELL, THE MINUTES DON'T REFLECT IT.  
5 I THOUGHT WE DID TOO, ACTUALLY, BUT THE MINUTES DON'T  
6 REFLECT THAT WE DID.

7 MR. SHIPLEY: OKAY. I RECALL, I AGREE WITH  
8 MR. WALCZEWSKI, YOUR HONOR, I WAS LOOKING THROUGH MY NOTES  
9 HERE TO MAKE SURE THAT'S THE CASE.

10 THE COURT: ALL RIGHT. THEN THE MINUTES WILL  
11 REFLECT THAT WE DID. MY RECOLLECTION WAS THAT I OVERRULED  
12 THE OBJECTION AS TO OBSTRUCTION; AND SO IF YOU'RE BOTH IN  
13 AGREEMENT THAT'S WHAT WE DID, THEN THE MINUTES OF THIS  
14 PROCEEDING CAN REFLECT THAT THAT OBJECTION IS OVERRULED;  
15 AND AS I UNDERSTAND IT, MR. SHIPLEY, THAT IS THE ONLY  
16 OTHER OBJECTION THAT WOULD IMPACT THE GUIDELINE RANGE;  
17 CORRECT?

18 MR. SHIPLEY: YES, YOUR HONOR.

19 THE COURT: AND, MR. WALCZEWSKI, THERE ARE NO  
20 OTHER GOVERNMENT OBJECTIONS THAT WOULD IMPACT THE  
21 GUIDELINE RANGE; CORRECT?

22 MR. WALCZEWSKI: CORRECT.

23 THE COURT: ALL RIGHT. THEN GIVEN THAT, BASED  
24 ON THE COURT'S RULING ON THE LOSS AMOUNT, THE COURT WILL  
25 ADOPT THE PRESENTENCE REPORT AS AMENDED BY THE COURT'S

1 ORDER AS THE COURT'S FINDINGS IN THIS CASE, I WILL APPLY A  
2 TOTAL OFFENSE LEVEL OF 39, A CRIMINAL HISTORY CATEGORY OF  
3 I, AND THAT RESULTS, I BELIEVE, IN AN ADVISORY GUIDELINE  
4 RANGE OF 262 TO 327 MONTHS OF IMPRISONMENT.

5 MR. WALCZEWSKI: YOUR HONOR, I THOUGHT I HAD A  
6 TOTAL OFFENSE LEVEL OF 41 PURSUANT TO THE PRESENTENCE  
7 REPORT, 7 -- BASE OFFENSE LEVEL OF 7, PLUS 24 FOR 31, PLUS  
8 2 FOR 33, THAT'S THE RELOCATION OF THEIR JURISDICTION,  
9 PLUS 4 FOR 37, PLUS 2 FOR 39, SPECIAL SKILL, PLUS 2 FOR  
10 OBSTRUCTION FOR 41 TOTAL, WHICH I BELIEVE WAS REFLECTED IN  
11 THE DRAFT PRESENTENCE REPORT DOCUMENT 366.

12 THE COURT: LET ME GO BACK AND TAKE A LOOK AT  
13 IT JUST A MINUTE.

14 I'M SORRY, YOU ARE CORRECT, MR. WALCZEWSKI, THE  
15 ORIGINAL, THE GUIDELINE RANGE WAS ENHANCED BY 24 -- EXCUSE  
16 ME, TOTAL OFFENSE LEVEL WAS INCREASED BY 24 LEVELS BASED  
17 ON LOSS; AND WHILE THE COURT USED A DIFFERENT METHOD TO  
18 CALCULATE LOSS, THE RESULTING ENHANCEMENT IS STILL 24  
19 LEVELS, I MISSPOKE, SO IT IS A TOTAL OFFENSE LEVEL OF 41,  
20 A CRIMINAL HISTORY CATEGORY OF I AND AN ADVISORY GUIDELINE  
21 RANGE OF 324 TO 405 MONTHS. ALL RIGHT.

22 ALL RIGHT THEN, MR. WALCZEWSKI, I'LL HEAR YOU  
23 ON THE GOVERNMENT'S POSITION.

24 MR. WALCZEWSKI: THANK YOU.

25 THE GOVERNMENT'S POSITION IS LAID OUT IN DETAIL

1 IN ITS TWO SENTENCING MEMORANDA, THE FIRST ONE FILED IN  
2 ADVANCE OF THE FEBRUARY SENTENCING HEARING AND THEN WE  
3 RECENTLY FILED A SUPPLEMENTAL SENTENCING MEMORANDUM ABOUT  
4 TWO WEEKS AGO ESSENTIALLY DISTINGUISHING SOME OF THE CASES  
5 THAT DEFENSE COUNSEL CITED, SO I WON'T REHASH ALL OF THOSE  
6 ARGUMENTS IN DETAIL; BUT GIVEN THAT THE GUIDELINES ARE NOW  
7 DETERMINED, I THINK WE'RE JUST CONSIDERING 3553(A) FACTORS  
8 AT THIS POINT.

9 TO SUMMARIZE THE ARGUMENTS THAT WE MADE IN OUR  
10 MEMORANDA, AS FOR NATURE, THE CIRCUMSTANCES OF THE OFFENSE  
11 AND THE DEFENDANT'S CIRCUMSTANCES, HERE WE HAVE A VERY  
12 WELL-EDUCATED DEFENDANT. SHE BETRAYED HER EMPLOYERS, NOT  
13 ONLY TO BENEFIT HERSELF, BUT ALSO TO BENEFIT ENTITIES IN  
14 THE PEOPLE'S REPUBLIC OF CHINA. A NUMBER, I BELIEVE FOUR,  
15 OF THE VICTIM COMPANIES DID FILE VICTIM IMPACT STATEMENTS  
16 OUTLINING HOW THE DEFENDANT'S BETRAYAL HAD HURT THE  
17 COMPANIES. THOSE ARE DOCUMENTS 394 THROUGH 397.

18 THE DEFENDANT HAS NO CRIMINAL HISTORY. SHE'S  
19 CRIMINAL HISTORY CATEGORY I. BASED ON HER EDUCATION AND  
20 HER LIFE EXPERIENCE, SHE SHOULD HAVE KNOWN BETTER AND SHE  
21 DID KNOW BETTER, AND WE BELIEVE THAT THOSE FACTORS SUGGEST  
22 THAT A SERIOUS SENTENCE IN THIS CASE IS APPROPRIATE.

23 AGAIN, THE GOVERNMENT'S OVERALL RECOMMENDATION  
24 IS 240 MONTHS OF IMPRISONMENT; THAT'S A MAXIMUM SENTENCE  
25 ON EACH COUNT OF CONVICTION ALL RUNNING CONCURRENTLY. SO

1 THE GOVERNMENT IS RECOMMENDING TECHNICALLY A DOWNWARD  
2 VARIANCE, BUT WE BELIEVE THAT EVEN THOUGH IT'S BELOW THE  
3 ADVISORY GUIDELINE RANGE, THE 240 MONTH TOTAL SENTENCE IS  
4 SUFFICIENT BUT NOT GREATER THAN NECESSARY TO MEET THE,  
5 MEET THE OBJECTIVES OF 3553(A) .

6 NEXT IMPORTANT FACTOR REFLECTING THE SERIOUS --  
7 A SENTENCE REFLECTING THE SERIOUSNESS OF THE OFFENSE, ONE  
8 THAT PROMOTES THE LAW AND JUST PUNISHMENT. THE HIGH  
9 INTENDED LOSS HERE, AS YOU FOUND IN YOUR RECENT OPINION,  
10 THAT SHOWS THE SERIOUSNESS OF THE OFFENSE HERE; AND THE  
11 GUIDELINES REFLECT THAT THE HIGHER THE LEVEL OF INTENDED  
12 LOSS, THE MORE SERIOUS THE CRIME.

13 ALSO, RESPECT FOR THE LAW IS ESSENTIAL HERE FOR  
14 TWO REASONS. THE GOVERNMENT SUBMITS THAT THE MORE  
15 IMPORTANT OF THE TWO REASONS IS FOR DETERRENCE, FRANKLY;  
16 AND I REALIZE DETERRENCE IS A SEPARATE FACTOR, BUT  
17 DETERRENCE IS IMPORTANT HERE. I'LL GET BACK TO DETERRENCE  
18 IN A SECOND; BUT ALSO TO PROMOTE THE DEFENDANT'S RESPECT  
19 FOR THE LAW HERE.

20 AT LEAST FOR THE GOVERNMENT, THROUGHOUT THE  
21 TRIAL, AND EVEN IN THE POST-TRIAL PROCEEDINGS, THE  
22 DEFENDANT HAS EXPRESSED NO REMORSE FOR HER ACTIONS AND HAS  
23 TAKEN VERY LITTLE RESPONSIBILITY BEYOND THE JURY'S  
24 VERDICT, SO WE BELIEVE THAT A SERIOUS SENTENCE HERE IS  
25 REQUIRED TO PROMOTE HER RESPECT FOR THE LAW.



1           NEXT IMPORTANT SEPARATE FACTOR, AGAIN, ADEQUATE  
2     DETERRENCE. AS WE MENTIONED IN OUR ORIGINAL SENTENCING  
3     MEMORANDUM IN THIS CASE, THE DEFENDANT WAS AWARE OF PRIOR  
4     PROSECUTIONS FOR TRADE SECRET THEFT. SHE HAD BEEN TRAINED  
5     ON THEM IN HER PREVIOUS JOBS, AND THE PARTICULAR PROSE-  
6     CUTIONS THAT SHE WAS TRAINED ON HAD RELATIVELY LENIENT  
7     SENTENCES, AND IT'S CLEAR THAT THAT EDUCATION HAD NO  
8     DETERRENT EFFECT FOR THE DEFENDANT BECAUSE SHE WENT ON TO,  
9     TO COMMIT HER CRIME. SO A MORE SERIOUS SENTENCE IS  
10    NECESSARY TO DETER OTHERS WHO ARE ENTRUSTED WITH VALUABLE  
11    TRADE SECRETS.

12           AS FOR PROTECTING AGAINST FURTHER CRIMES OF THE  
13    DEFENDANT, THE GOVERNMENT BELIEVES THAT THE DEFENDANT IN  
14    THIS CASE IS UNLIKELY TO REOFFEND; HOWEVER, IT IS NOT  
15    IMPOSSIBLE BECAUSE, AS THE TRIAL EVIDENCE SHOWED, THE  
16    GOVERNMENT IS NOT CONFIDENT THAT IT HAS RECOVERED ALL OF  
17    THE STOLEN TRADE SECRETS IN THIS CASE. FORENSIC INVESTI-  
18    GATOR RINALDI TESTIFIED THAT IT WAS LIKELY THAT THERE WAS  
19    ANOTHER DEVICE OUT THERE AT LEAST THAT CONTAINED THESE  
20    TRADE SECRETS; AND THERE'S ALWAYS THE POSSIBILITY THAT  
21    THERE ARE OTHER CACHES OF TRADE SECRETS THE GOVERNMENT HAS  
22    NOT IDENTIFIED, AND THOSE TRADE SECRETS REMAIN VALUABLE,  
23    SO THERE IS SOME NEED TO PROTECT AGAINST FUTURE CRIMES OF  
24    THE DEFENDANT.

25           THE COURT: HOW CONFIDENT IS THE GOVERNMENT

1        THAT THERE IS ANOTHER COPY OF THESE TRADE SECRETS ON SOME  
2        OTHER DEVICE THAT'S NOT BEEN RECOVERED?

3                MR. WALCZEWSKI:    SO THE FORENSIC DATA AT TRIAL  
4        SHOWED THAT THERE WAS ANOTHER DEVICE THAT THESE TRADE  
5        SECRETS WERE TRANSFERRED FROM ONTO THE HARD DRIVE THE  
6        GOVERNMENT DID RECOVER.   WE DON'T HAVE ANY IDEA OF THE  
7        SITUATION WITH THAT OTHER DEVICE, WE DON'T KNOW IF IT'S  
8        BEEN WIPE OR THROWN AWAY OR HIDDEN SOMEWHERE, SO IT'S  
9        HARD FOR ME TO QUANTIFY, JUDGE --

10               THE COURT:    BUT YOU ARE CONFIDENT THAT THERE  
11        WAS ANOTHER DEVICE ONTO WHICH THESE SECRETS WERE  
12        TRANSFERRED?

13               MR. WALCZEWSKI:    THAT'S WHAT THE FORENSIC  
14        EVIDENCE AT TRIAL INDICATED, YES.

15               THE FINAL POINT, AND I'LL SPEND A LITTLE BIT  
16        MORE TIME ON THIS ONE BECAUSE IT WAS -- DR. YOU SPENT A  
17        FAIR AMOUNT OF TIME IN HER SENTENCING MEMORANDA MAKING THE  
18        SENTENCING DISPARITY POINT, THE NEED TO AVOID UNWARRANTED  
19        SENTENCING DISPARITIES AMONG SIMILARLY SITUATED  
20        DEFENDANTS.

21               AGAIN, THE GOVERNMENT FILED ITS SUPPLEMENTAL  
22        SENTENCING MEMORANDUM SEVERAL WEEKS AGO, AND SO I THINK  
23        THAT WAS DOCUMENT NUMBER 419.   THE FIRST POINT THAT I'LL  
24        MAKE IS UNDER SIXTH CIRCUIT LAW WE CITED THE HYMES CASE,  
25        H Y M E S, FOR THE COURT TO -- IF THE COURT FOLLOWS,

1 CORRECTLY CALCULATES THE GUIDELINES, THEN THAT IS SUFFI-  
2 CIENT TO AVOID DISPARITIES; AND THE COURT HAS ALREADY DONE  
3 THAT, IT'S CORRECTLY CALCULATED AND IS CONSIDERING THE  
4 GUIDELINE RANGE, SO THAT IN AND OF ITSELF UNDER SIXTH  
5 CIRCUIT LAW IS SUFFICIENT TO AVOID UNWARRANTED SENTENCING  
6 DISPARITIES; BUT THE POINT THAT THE GOVERNMENT MADE IN ITS  
7 MOST RECENT FILING WAS THAT THE CASES THAT THE DEFENDANT  
8 CITED, THOSE WERE ALL VIOLATIONS OF 18, U.S.C., 1832,  
9 WHICH IS PURELY COMMERCIAL THEFT OF TRADE SECRETS; AND  
10 MOST OF THEM, I BELIEVE 9 OUT OF 15, WERE PLEAS. SO YOU  
11 HAVE A LESS SERIOUS OFFENSE AS OPPOSED TO 1831, AND YOU  
12 HAVE A MAJORITY OF CASES WHERE THE DEFENDANT ACCEPTED  
13 RESPONSIBILITY PRETRIAL, SO IT'S NOT SURPRISING THAT  
14 YOU'RE GOING TO HAVE RELATIVELY LOWER SENTENCES FOR THE  
15 CASES THAT THE DEFENDANT CITED. THEY'RE SIMPLY NOT  
16 SIMILAR ENOUGH TO THIS CASE IN ORDER TO BE RELEVANT TO THE  
17 SENTENCING DISPARITY ARGUMENT.

18 AGAIN, ALL THE COURT NEEDS TO DO IS CALCULATE  
19 AND CONSIDER THE GUIDELINES; BUT IF THE COURT DID WANT TO  
20 LOOK AT ANALOGOUS CASES, WE SUGGEST THAT THE COURT LOOK AT  
21 1831 ECONOMIC ESPIONAGE CASES WHICH WENT TO TRIAL BECAUSE  
22 THAT'S RELEVANT TO THE DEFENDANT'S ACCEPTANCE OF RESPONSI-  
23 BILITY; AND THE, THE GOVERNMENT LISTED THREE SUCH CASES IN  
24 ITS SENTENCING MEMORANDUM. TWO OF THEM HAD SENTENCES, I  
25 BELIEVE THEY WERE BOTH IN EXCESS OF 10 YEARS, ONE IS 15

1 YEARS; SO THAT'S JUST -- THAT JUST SHOWS AGAIN THAT A  
2 SERIOUS SENTENCE ALONG THE LINES OF WHAT THE GOVERNMENT IS  
3 SUGGESTING HERE WOULD NOT RESULT IN AN UNWARRANTED  
4 DISPARITY.

5 SO THAT'S ALL I HAVE ON THE 3553(A) FACTORS. I  
6 DON'T KNOW IF YOU WANT ME TO ADDRESS SUPERVISED RELEASE OR  
7 FINE OR RESTITUTION OR FORFEITURE AT THIS POINT.

8 THE COURT: GO AHEAD AND DO THAT AS WELL.

9 MR. WALCZEWSKI: OKAY. AS FOR SUPERVISED  
10 RELEASE, THE GOVERNMENT SUBMITS THAT SUPERVISED RELEASE IS  
11 APPROPRIATE IN THIS CASE, BUT WE DEFER TO THE COURT AS TO  
12 THE LENGTH OF ANY PERIOD OF SUPERVISED RELEASE.

13 SIMILARLY, WITH REGARD TO A FINE, THE PRE-  
14 SENTENCE REPORT INDICATED THAT THE DEFENDANT DOES HAVE THE  
15 ABILITY TO PAY A FINE. THE MAXIMUM FINE DUE TO THE 1831  
16 CONVICTION IS \$5 MILLION. AGAIN, THE GOVERNMENT SUBMITS  
17 THAT A FINE IS APPROPRIATE, BUT DEFERS TO THE COURT AS TO  
18 THE AMOUNT, EXACT AMOUNT OF ANY SUCH FINE.

19 AS FOR RESTITUTION, THE COURT MENTIONED THE  
20 SECOND ADDENDUM TO THE PRESENTENCE REPORT WHICH CONTAIN  
21 ONE OF THE VICTIM COMPANIES' REQUEST FOR RESTITUTION.  
22 DEFENDANT -- THAT WAS DOCUMENT 416. IN DOCUMENT 418 THE  
23 DEFENDANT INDICATED THAT SHE DOES NOT OPPOSE THAT REQUEST  
24 FOR RESTITUTION, SO THE GOVERNMENT SIMPLY REQUESTS THAT  
25 THE COURT INCLUDE THE REQUESTED RESTITUTION AMOUNT IN, IN

1 THE FINAL SENTENCE IN THIS CASE.

2 FINALLY, AS TO FORFEITURE, THERE WAS A PRELIMI-  
3 NARY ORDER OF FORFEITURE ENTERED ON NOVEMBER 31ST {SIC} OF  
4 2021 AS DOCUMENT 389, AND THE GOVERNMENT NOTICED THAT ON  
5 DECEMBER 6TH; THAT WAS DOCUMENT 390. PURSUANT TO RULE  
6 32.2(B)(4)(B) WE WOULD ASK THAT THE COURT ORALLY ANNOUNCE  
7 THAT FORFEITURE AT THIS HEARING, AND ALSO TO INCLUDE IT IN  
8 THE JUDGMENT IN THIS CASE. FOLLOWING THE HEARING TODAY,  
9 THE GOVERNMENT WILL SUBMIT A FINAL ORDER OF FORFEITURE FOR  
10 THE COURT TO ENTER.

11 SO UNLESS THE COURT HAS ANY QUESTIONS, THAT'S  
12 ALL I HAVE.

13 THE COURT: I DON'T BELIEVE SO, MR. WALCZEWSKI.  
14 THANK YOU VERY MUCH.

15 MR. WALCZEWSKI: THANK YOU.

16 THE COURT: ALL RIGHT, MR. SHIPLEY.

17 MR. SHIPLEY: THANK YOU, SIR.

18 YOUR HONOR, I HAVE WRESTLED WITH WHERE TO BEGIN  
19 THIS MORNING, AND THE FIRST PLACE THAT I'VE DECIDED TO  
20 BEGIN WITH IS JUST REALLY RESPONDING TO MR. WALCZEWSKI AND  
21 SOME OF THE THINGS THAT HE JUST PRESENTED TO THE COURT;  
22 AND I THINK THE MOST ALARMING THING IS -- AND I DO AGREE  
23 WITH MR. WALCZEWSKI THAT, YOU KNOW, THEY HAVE CITED  
24 CERTAIN CASES IN THEIR SUPPLEMENTAL MEMORANDUM, BUT I DO  
25 THINK THAT THE -- I DON'T KNOW IF THE ANALYSIS IS A LITTLE

1 SHORT-SIGHTED OR MISLEADING BECAUSE, YES, SOME OF THE  
2 CASES THAT WE CITED IN OUR MEMORANDUM DID NOT INCLUDE THE  
3 UNDERLYING ECONOMIC ESPIONAGE CHARGE; BUT AS THE COURT  
4 KNOWS AND THE COURT HAS ACTUALLY SEEN IN THIS CASE IN  
5 PARTICULAR, YOU KNOW, CHARGING ECONOMIC ESPIONAGE IS A  
6 PROSECUTORIAL DECISION. THIS CASE WAS INDICTED ON THEFT  
7 OF TRADE SECRETS, AND NOT ONLY JUST A FEW MONTHS BEFORE  
8 TRIAL IS WHEN THE SUPERSEDING INDICTMENT CAME OUT TO ADD  
9 ECONOMIC ESPIONAGE; AND I DRAW THAT DISTINCTION, YOUR  
10 HONOR, BECAUSE OF THIS, IN ALL THE CASES THAT WE CITED --  
11 WELL, I DON'T WANT TO SAY ALL, BUT IN MOST OF THE CASES  
12 THAT WE CITED, IT IS OUR POSITION THAT THOSE ARE ARGUABLY  
13 FAR MORE EGREGIOUS THAN WHAT'S HAPPENED IN THIS CASE.

14 WITHOUT GOING INTO EACH ONE OF THESE CASES, AND  
15 I'M HAPPY TO GO INTO THE CASES IF THE COURT HAS ANY  
16 QUESTIONS, BUT IN THOSE CASES, YOUR HONOR, ARGUABLY, BASED  
17 ON THE FACTS AND WHAT WAS PRESENTED OR WHAT WAS WITH,  
18 FOUND WITHIN THE OPINION, WE HAVE SITUATIONS THAT WE ARE  
19 HAVING INDIVIDUALS SET UP OTHER COMPANIES, ACTUALLY TRANS-  
20 FER PROPRIETARY, CONFIDENTIAL MATERIAL TO THESE OTHER  
21 COMPANIES, AND THEN GET PAID FOR IT. SO I THINK THERE'S A  
22 GOOD DISTINCTION, YOUR HONOR, BECAUSE THOSE CASES ACTUALLY  
23 INVOLVED ADDITIONAL STEPS OTHER THAN WHAT DR. YOU IS  
24 ALLEGED TO HAVE DONE OR WAS FOUND, WHAT THE JURY FOUND SHE  
25 DID IN THIS CASE.

1 WE HAVE INDIVIDUALS THAT STARTED COMPANIES,  
2 THAT HAD CLEARLY BENEFITED A FOREIGN ENTITY WITH ACTUAL  
3 DOLLARS AND WITH ACTUAL INFORMATION. SO I THINK BY THE  
4 GOVERNMENT'S CITING THAT WE DIDN'T CITE ANY CASES WITH  
5 REGARD TO ECONOMIC ESPIONAGE, I THINK THAT'S A LITTLE  
6 MISLEADING BECAUSE I THINK WHEN YOU LOOK AT THE FACTS OF  
7 THE CASES WE CITED, IF THEY WANTED TO HAVE CHARGED  
8 ECONOMIC ESPIONAGE, THEY COULD HAVE BECAUSE IT DID IN FACT  
9 IN A LOT OF THESE CASES BENEFIT A FOREIGN INSTRUMENTALITY;  
10 AND ONE IN PARTICULAR CASE THAT WE CITED, YOUR HONOR, DID  
11 IN FACT CHARGE ECONOMIC ESPIONAGE IN THAT CASE; AND AFTER  
12 A JURY TRIAL, THEY FOUND THAT THE INDIVIDUAL WAS ACQUITTED  
13 OF THAT CHARGE, BUT THE JUDGE IN THAT CASE, YOUR HONOR,  
14 FOUND THAT IT WAS DONE TO BENEFIT A FOREIGN  
15 INSTRUMENTALITY.

16 SO I JUST WANTED TO BRING THAT UP BECAUSE I  
17 THINK IT'S A GOOD DISTINGUISHING FACTOR WHEN WE SAY THAT  
18 THERE -- YOU KNOW, THAT SOMEHOW ECONOMIC ESPIONAGE, THE  
19 CHARGE ALONE MAKES THIS CASE FAR MORE EGREGIOUS, I WOULD  
20 HAVE TO DISAGREE WITH THAT BECAUSE A LOT OF THESE CASES  
21 THAT WE CITED, IT IS OUR OPINION AND WE HAVE PROVIDED TO  
22 THE COURT THAT THE FACTS OF THOSE CASES WERE FAR MORE  
23 EGREGIOUS, FAR MORE OF THE MATERIAL THAT WAS ACTUALLY  
24 TRANSFERRED. AND I'LL GET BACK TO THE, YOU KNOW -- AND I  
25 DON'T WANT TO GO INTO THE INTENDED AND ACTUAL LOSS TOO

1 MUCH, I DO WANT TO ADDRESS THAT IN A FEW MINUTES, BUT --

2 THE COURT: ARE YOU SUGGESTING, MR. SHIPLEY,  
3 THAT THIS CASE IS SOMEHOW LESS SERIOUS BECAUSE SHE WAS  
4 ARRESTED BEFORE SHE COULD ACTUALLY, AS FAR AS WE KNOW,  
5 TRANSFER THESE SECRETS TO A CHINESE COMPANY?

6 MR. SHIPLEY: YOUR HONOR, IF I COULD DISSECT  
7 THAT QUESTION A LITTLE BIT BECAUSE MY ANSWER TO THAT IS,  
8 YES, BECAUSE I THINK WHAT THAT QUESTION IMPLIES FROM THE  
9 COURT IS THAT IN FACT THIS WAS GOING TO HAPPEN, AND I  
10 THINK THAT'S ONE OF THE MAIN UNDERLYING ISSUES THAT WE  
11 HAVE WITH THE OVERALL GUIDELINE RANGE THAT I'M -- WE'LL  
12 TALK ABOUT IN A FEW MINUTES; BUT WITH REGARD TO ALL OF  
13 THIS, WE HAVE TO HAVE -- AND WE'RE ASSUMING, AND EVEN IN  
14 THE COURT'S, IN THE COURT'S MEMORANDUM OPINION, THE COURT  
15 STATES THAT THERE ARE A LOT OF ASSUMPTIONS IN THIS, THERE  
16 ARE A LOT OF ASSUMPTIONS IN LOOKING AT THE INTENDED LOSS,  
17 I BELIEVE THAT'S ON THE SECOND TO LAST PAGE, BUT THERE ARE  
18 A LOT OF ASSUMPTIONS WITH REGARD TO THIS. SO I THINK THE  
19 ANSWER TO THE COURT'S QUESTION IS IS THAT IF THE COURT  
20 ASSUMES THAT THE MATERIAL WAS GOING TO BE TRANSFERRED --  
21 WHAT WE HAVE HERE, I MEAN, THAT IS CLEARLY WHAT IT IS,  
22 IT'S AN ASSUMPTION.

23 NOW, WHAT WE HAVE BEFORE THE COURT TODAY AND  
24 WHAT WE'VE HAD IN THIS CASE ARE THE FACTS AND WHAT WAS  
25 PRESENTED AT TRIAL, AND THE FACTS THAT WE HAVE ARE SIMPLY



1 THAT IT WAS NOT TRANSFERRED. SO MY ANSWER TO THE COURT'S  
2 QUESTION IS DO I THINK IT'S LESS SERIOUS? ABSOLUTELY, I  
3 DO, BECAUSE IN THESE OTHER CASES, YOUR HONOR, EXCUSE ME,  
4 IN THESE OTHER CASES, YOUR HONOR, WE HAVE ACTUAL  
5 TRANSFERENCE, WE HAVE ACTUAL DAMAGE; AND I THINK THAT'S A  
6 VERY GOOD DISTINGUISHING FACTOR, YES.

7 I MEAN, IF WE RUN THAT LOGICAL PROGRESSION, OR  
8 IF YOU WANT TO CALL IT LOGICAL PROGRESSION, IF WE RUN THAT  
9 PROGRESSION IN SAYING THAT, WELL, WE ASSUME THAT SHE WAS  
10 GOING TO DO THIS, I DON'T THINK THAT'S THE COURT'S JOB AND  
11 I DON'T THINK THAT'S THE WAY THE LAW SHOULD BE. I THINK  
12 WE SHOULD PUNISH PEOPLE FOR WHAT THEY'VE DONE, NOT WHAT WE  
13 THINK IS GOING TO HAPPEN.

14 THE COURT: BUT THE PROBLEM IS HERE,  
15 MR. SHIPLEY, THAT SHE WAS CONVICTED OF A CONSPIRACY TO DO  
16 EXACTLY THAT.

17 MR. SHIPLEY: IT BRINGS UP ANOTHER GOOD POINT,  
18 YOUR HONOR. I UNDERSTAND THE WAY CONSPIRACIES, YOU KNOW,  
19 WORK, YOU KNOW, ONE PERSON IS AS CULPABLE AS ANY OTHER  
20 PERSON IN THESE CASES; BUT WHEN YOU LOOK AT IT, YOUR  
21 HONOR, DR. YOU SITS HERE TODAY TAKING THE BRUNT OF THE  
22 RESPONSIBILITY FOR CERTAIN ACTIONS THAT SHE COULDN'T  
23 CONTROL. I THINK THERE HAS BEEN, THERE HAS BEEN ARGUMENT  
24 IN THE FIRST SENTENCING THAT WE HAVE TWO INDIVIDUALS THAT  
25 WILL NEVER BE BROUGHT BEFORE AN AMERICAN COURT, NEVER; AND

1 WE HAVE CERTAIN THINGS THAT THOSE INDIVIDUALS DID THAT  
2 DETRIMENTALLY AFFECT, AFFECTED DR. YOU.

3 WE HAVE A SITUATION THAT THIS THOUSAND TALENTS  
4 PLAN APPLICATION, I DO WANT TO TOUCH ON THAT A LITTLE BIT  
5 BECAUSE THE COURT HAS BROUGHT UP THE CONSPIRACY. YOUR  
6 HONOR, THAT THOUSAND TALENTS PLAN APPLICATION WAS DONE,  
7 WAS COMPILED BY XIANGCHEN LIU, AND, THEREFORE, AND WHAT --  
8 NOW, THE CLEAR, I GUESS, THE INSTANT REBUTTAL TO THAT  
9 WOULD BE, WELL, SHE SIGNED IT; BUT WE HAVE -- THERE'S AN  
10 ARGUMENT THAT SHE NEVER EVEN SIGNED THAT DOCUMENT, YOUR  
11 HONOR.

12 WE HAVE AN INDIVIDUAL THAT IS TAKING THESE,  
13 THIS INFORMATION THAT WE ALREADY KNOW FROM THE COURT'S  
14 OPINION, MEMORANDUM OPINION, THAT DOCUMENTS THAT, THAT  
15 NUMBERS THAT ARE INFLATED, THAT THE COURT HAS EVEN AGREED  
16 WITH THE DEFENSE THAT IT'S PUFFERY. WE HAVE THIS IN THERE  
17 THAT WAS SUBMITTED TO A FOREIGN INSTRUMENTALITY TO GET AN  
18 AWARD; SO, OBVIOUSLY, THE ISSUE I HAVE WITH THAT, YOUR  
19 HONOR, ABOUT TAKING SO MANY THINGS OUT OF THE THOUSAND  
20 TALENTS PLAN, THE THOUSAND TALENTS PLAN APPLICATION, ONE  
21 OF THE MAIN ISSUES I HAVE WITH THAT IS, NUMBER ONE, IT WAS  
22 NOT COMPLETED BY DR. YOU; BUT, NUMBER TWO, WE HAVE A  
23 SITUATION WHERE WE HAVE CERTAIN INFORMATION FOUND WITHIN  
24 THE THOUSAND TALENTS PLAN APPLICATION ON THE ONE HAND THAT  
25 WE, AS WE STAND HERE TODAY AND AS THE COURT HAS RULED,

1 THAT SAID IT IS EXAGGERATED, IT IS PUFFERY; SO, THEREFORE,  
2 IF WE ARE CHERRY PICKING BETWEEN THAT DOCUMENT ON THE  
3 ISSUES THAT WE BELIEVE OR THAT ARE OFFERED TO THE COURT  
4 THAT ARE TRUE, BUT YET WE KNOW THIS DOCUMENT HAS  
5 INFORMATION THAT'S NOT TRUE, I THINK THAT CALLS INTO  
6 QUESTION THE VALIDITY OF THE ENTIRE DOCUMENT.

7 THE COURT: WHAT PROOF IS THERE, MR. SHIPLEY,  
8 THAT SHE DID NOT COMPLETE THAT DOCUMENT OR PROVIDE THE  
9 INFORMATION THAT WAS USED TO COMPLETE IT IN THIS RECORD?

10 MR. SHIPLEY: YOUR HONOR, THAT WOULD BE SIMPLY  
11 FOR SOMETHING THAT DR. YOU WOULD STATE; THAT'S HER  
12 POSITION, AND I THINK THAT'S SOMETHING THAT --

13 THE COURT: SHE DIDN'T TESTIFY.

14 MR. SHIPLEY: I UNDERSTAND. AND, YOUR HONOR,  
15 SHE IS PREPARED AND WILLING TO GIVE A STATEMENT TODAY TO  
16 THE COURT; BUT I THINK WHAT WE HAVE IS IS WE HAVE A  
17 SITUATION -- AND I UNDERSTAND WHAT THE COURT'S POINT IS;  
18 BUT, I MEAN, IF IT IS A REASONABLE ALTERNATIVE, WE HAVE AN  
19 INDIVIDUAL THAT, AS I SAID, WILL NEVER BE BROUGHT BEFORE  
20 THIS COURT; THAT EVEN IN -- WE LOOK BACK IN THE TESTIMONY,  
21 EVEN IN HER INTERROGATION, EVEN THE FBI ACKNOWLEDGED THE  
22 FACT THAT THERE IS A SITUATION WHERE I THINK WHAT THEY  
23 SAID -- NOW, THERE WAS AN ISSUE AT TRIAL ABOUT INTERRO-  
24 GATION TACTICS AND WHAT HAVE YOU; BUT, I MEAN, THEY'VE  
25 ACKNOWLEDGED THEY THOUGHT SHE WAS BEING TAKEN ADVANTAGE OF

1 BY OTHER PEOPLE; AND I THINK IF YOU LOOK AT THAT, YOUR  
2 HONOR, IF IT'S, IF IT'S REASONABLE TO ASSUME THAT, YOU  
3 KNOW, SHE SIGNED THIS, IT'S ALSO REASONABLE TO ASSUME THAT  
4 SHE DIDN'T; AND, IN FACT, WHEN WE HAVE THIS, WE HAVE THIS  
5 INFORMATION FROM SOMEONE THAT IS OBVIOUSLY FAMILIAR WITH  
6 THE CULTURE AND THE BUSINESS PRACTICES IN CHINA, HE KNEW  
7 ALL OF THIS, YOUR HONOR; AND, IN FACT, IT'S OUR -- IT  
8 WOULD BE OUR POSITION, YOUR HONOR, THAT IF THIS DOCUMENT  
9 ALONE CONTAINS PUFFERY, CONTAINS EXAGGERATED INFORMATION,  
10 IT'S REASONABLE TO ASSUME IT CALLS INTO QUESTION THE  
11 VALIDITY OF THE ENTIRE DOCUMENT.

12 GOING FORWARD, YOUR HONOR, ADDRESSING A FEW  
13 POINTS THAT MR. WALCZEWSKI SAID, OR TALKED ABOUT, YOU  
14 KNOW, HE DREW THE DISTINCTION WITH REGARD TO THESE OTHER  
15 CASES HAVING SO-CALLED ACCEPTANCE OF RESPONSIBILITY. YOUR  
16 HONOR, I DON'T THINK THAT MAKES MUCH OF A DIFFERENCE,  
17 RESPECTFULLY. WE HAVE A SITUATION HERE WHERE WE HAVE AN  
18 INDIVIDUAL SITTING HERE THAT HAS A CRIMINAL HISTORY  
19 OFFENSE CATEGORY OF I, OFFENSE, OFFENSE LEVEL OF 41. HAD  
20 SHE TAKEN A PLEA, HAD SHE TAKEN A PLEA IN THIS CASE, THAT  
21 WOULD HAVE REDUCED HER OVERALL GUIDELINE RANGE TO 235 TO  
22 293. I MEAN, EVERYTHING IN THIS CASE, AS THE COURT STATED  
23 THE FIRST TIME WE CAME HERE BEFORE SENTENCING, EVERYTHING  
24 IN THIS CASE IS DRIVEN BY THIS INTENDED LOSS AMOUNT.  
25 EVERYTHING. ESPECIALLY WHEN YOU HAVE AN OVERALL OFFENSE

1 LEVEL OF 7. SO I DON'T THINK THE DISTINCTION IN THE CASES  
2 SAYING THAT ONE PERSON ACCEPTED RESPONSIBILITY IS THAT  
3 MUCH OF A DIFFERENCE, YOUR HONOR, BECAUSE IT REDUCES HER  
4 GUIDELINE RANGE STILL ABOVE THE STATUTORY MAXIMUM HERE.

5 WITH REGARD TO ANY TYPE OF DETERRENCE THAT  
6 MR. WALCZEWSKI SAID, I BELIEVE HE STATED IN HIS ARGUMENT,  
7 YOUR HONOR, THAT, WELL, WE BELIEVE THAT THIS PARTICULAR  
8 DEFENDANT IS UNLIKELY TO REOFFEND; BUT, THEN AGAIN, WE GET  
9 INTO THE ARGUMENT ABOUT, WELL, THERE'S A POSSIBILITY, YOU  
10 KNOW, SHE GETS OUT, THAT SHE COULD REOFFEND BECAUSE, YOU  
11 KNOW, IT'S THEIR POSITION THAT THERE IS ANOTHER DEVICE.  
12 YOU KNOW, WHAT WE KNOW IS, WHAT THEY'VE ARGUED HERE, YOUR  
13 HONOR, WE TAKE THE POSITION HERE, YOUR HONOR, THAT THERE  
14 IS NO OTHER DEVICE, THAT THERE NEVER WAS ANOTHER DEVICE;  
15 AND I THINK THE ONLY THING THEY CAN --

16 THE COURT: THE PROOF AT TRIAL, MR. SHIPLEY,  
17 WAS THAT THERE WAS ANOTHER DEVICE.

18 MR. SHIPLEY: THERE WAS A TRANSFERENCE.

19 THE COURT: TRANSFER TO ANOTHER DEVICE.

20 MR. SHIPLEY: AND THAT'S THE THING, YOUR HONOR,  
21 THAT THERE HAS BEEN NO DEVICE EVER RECOVERED. I MEAN, IN,  
22 IN --

23 THE COURT: AND THAT'S THE TROUBLING THING,  
24 IT'S NEVER BEEN RECOVERED, THEY DON'T KNOW WHERE IT IS.

25 MR. SHIPLEY: IT'S OUR POSITION, YOUR HONOR, IT

1 DOESN'T EXIST. AND THE THING IS IS THAT, AGAIN, WE ARE  
2 TRAVELING DOWN THAT LINE OF ASSUMPTIONS AND SAYING THAT,  
3 WELL, IT WAS TRANS -- THERE'S A TRANSFERENCE, A DIGITAL  
4 FOOTPRINT HERE. OUR POSITION IS, YOUR HONOR, IT DOES NOT  
5 EXIST. AND WHAT DO WE HAVE TO SUPPORT THAT? WELL, YOUR  
6 HONOR, WHAT WE HAVE TO SUPPORT THAT IS IS THAT SHE WAS  
7 ASKED TO LEAVE, SHE WENT STRAIGHT HOME, SHE GAVE THEM THE  
8 MATERIALS, SHE HAD EVERYTHING; AND IF THERE WAS SOME OTHER  
9 HARD DRIVE THERE, THEY WOULD HAVE FOUND IT, YOUR HONOR.  
10 THERE IS NO HARD DRIVE.

11 WE ARE -- IF WE TAKE THAT POSITION AND WE ARE  
12 SAYING THAT WE ARE GOING TO INCREASE HER LEVEL OF CULPA-  
13 BILITY BECAUSE IT'S JUST THERE IS A, THERE'S PROBABLY  
14 ANOTHER HARD DRIVE THAT'S NEVER BEEN FOUND, I DON'T THINK  
15 THAT IS ONE OF THE THINGS THAT WE AS A SOCIETY WANT TO DO  
16 AND START SENTENCING PEOPLE TO HIGH SENTENCES ON WHAT WE  
17 THINK COULD BE THERE; AND I THINK THAT TIES BACK AROUND TO  
18 MY ARGUMENT ABOUT THE, THE LEVEL OF OVERALL SPECULATION  
19 WHEN IT COMES TO THE INTENDED LOSS.

20 NOW, I'M NOT SAYING THAT, I'M NOT OFFERING IT  
21 TO THE COURT TO PROVIDE SOME ARGUMENT AS TO WHAT THE  
22 COURT'S RULING IS. I UNDERSTAND WHAT THE COURT'S RULING  
23 IS; AND IF I HAD AN OBJECTION TO THAT RULING, WE SHOULD  
24 HAVE, I SHOULD HAVE SAID THAT AT THE BEGINNING, BUT I  
25 UNDERSTAND THAT'S THE COURT'S RULING; BUT THE MAIN PROBLEM

1 WE HAVE IN THESE CASES, YOUR HONOR, AND THE CASE LAW  
2 SUPPORTS THIS POSITION, IS THAT WHEN IT COMES TO INTENDED  
3 LOSS, THE GUIDELINES DO NOT ACCURATELY REPRESENT THE  
4 SERIOUSNESS OF THE OFFENSE BECAUSE THE CASE LAW, THE CASE  
5 LAW IS LITTERED WITH STATEMENTS DISCUSSING USING THE  
6 GUIDELINES AS A PROXY FOR CULPABILITY; AND ESPECIALLY WHEN  
7 YOU HAVE SUCH A HIGH LOSS AMOUNT, YOU KNOW, THE GUIDELINES  
8 AT THAT POINT REALLY BECOME REALLY DIVORCED FROM THE  
9 3553(A) OBJECTIVES BECAUSE WE HAVE A SITUATION HERE WHERE  
10 THERE IS ZERO ACTUAL LOSS, AND WE HAVE AN OFFENSE LEVEL OF  
11 7; AND THE CASES HAVE ADDRESSED THAT, YOUR HONOR, TALKING  
12 ABOUT ESPECIALLY WHEN YOU HAVE A SITUATION WHERE YOU HAVE  
13 A RELATIVELY LOW OFFENSE LEVEL AND IT'S EXPONENTIALLY  
14 INCREASED, OVER THREEFOLD IN THIS CASE, ACTUALLY STRICTLY  
15 ENHANCEMENT ALONE REGARDING THE OFFENSE -- REGARDING THE  
16 FINANCIAL LOSS, IT'S AN INCREASE OVER THREEFOLD, YOUR  
17 HONOR, AND THIS CASE HERE IS THE QUINTESSENTIAL CASE THAT  
18 THE COURT SHOULD ENTER A VERY LARGE VARIANCE OR A VERY  
19 LARGE DEPARTURE.

20 THE COURT: SO YOU'RE SUGGESTING THAT THE  
21 POLICY APPROACH TAKEN BY THE GUIDELINES, THAT IS TO  
22 INCREASE THE SENTENCE OR THE RECOMMENDED SENTENCE BASED ON  
23 THE EXTENT OF THE THEFT OR THE INTENDED THEFT IS SOMEHOW  
24 FLAWED?

25 MR. SHIPLEY: I DO, YOUR HONOR.

1 THE COURT: THE UNDERLYING PRINCIPLE IS THAT  
2 THE GREATER THE THEFT, THE GREATER THE SENTENCE; RIGHT?

3 MR. SHIPLEY: I UNDERSTAND.

4 THE COURT: YOU'RE SAYING THAT'S FLAWED?

5 MR. SHIPLEY: I DO BECAUSE I THINK THAT DOESN'T  
6 TAKE INTO ACCOUNT A CASE-BY-CASE BASIS. I THINK THE --  
7 THERE WAS COMMENTARY TO THE GUIDELINE WE CITED IN OUR  
8 SENTENCING MEMORANDUM THAT TALKS ABOUT IF YOU STRICTLY  
9 TAKE THAT APPROACH, SAYING THAT THAT REASONING THERE IS  
10 SUFFICIENT ON ITS FACE, A SITUATION WHERE WE HAVE AN  
11 ELDERLY PERSON THAT A FRAUD IS COMMITTED UPON WHERE THEY  
12 LOSE \$20,000, WE'LL JUST SAY THAT, \$20,000, THAT'S THEIR  
13 LIFE SAVINGS ON ONE HAND; AND WE HAVE A FRAUD THAT'S  
14 COMMITTED ON A MULTI-MILLION DOLLAR COMPANY THAT INVOLVES  
15 A \$5 MILLION LOSS.

16 WELL, WHICH ONE IS MORE SERIOUS? WELL, PER THE  
17 GUIDELINES THE FRAUD COMMITTED ON THE -- IF WE LOOK  
18 STRICTLY AT THE GUIDELINES, THE FRAUD ON THE CORPORATION;  
19 OR LET'S JUST SAY THAT ON THE CORPORATION, LET'S SAY  
20 NOTHING WAS EVER -- THERE WAS NO ACTUAL LOSS, IT WAS ALL  
21 INTENDED; AND WE HAVE A SITUATION OVER HERE WHERE WE ARE  
22 ARGUING WITH \$20,000 AS OPPOSED TO \$20 MILLION ON INTENDED  
23 LOSS, WHICH ONE IS ARGUABLY MORE SERIOUS? AND THAT'S  
24 WHERE I THINK THE REASONING BEHIND THE GUIDELINES IS  
25 FLAWED BECAUSE IF WE STRICTLY LOOK AT WHAT'S ON PAPER, IF



1 WE STRICTLY MAKE IT A MATHEMATICAL, MECHANICAL APPROACH,  
2 THAT'S WHERE IT'S FLAWED; AND I THINK THERE'S THE REASON,  
3 YOUR HONOR, THAT THIS COURT CAN COME IN, OR THE SENTENCING  
4 COMMISSION, THE CASE LAW FROM MOST OF THESE CIRCUITS, YOUR  
5 HONOR, THAT TALK ABOUT THESE CASES HERE, IT'S WELL WITHIN  
6 THE COURT'S DISCRETION TO VARY DOWNWARD.

7 I APOLOGIZE, YOUR HONOR, GIVE ME ONE SECOND.  
8 I'M TRYING -- I'M LOOKING AT THE COURT'S OPINION IN  
9 SOMETHING THAT THE -- I KNOW THE COURT LOOKED AT, THE  
10 HOWLEY CASE, AND BASED ITS, A LOT OF ITS REASONING OFF OF  
11 JUDGE PHILLIPS; AND SOME OF THE LANGUAGE IN THERE, I  
12 UNDERSTAND WHAT THE COURT RULED, AND, AGAIN, I'M NOT  
13 ARGUING WITH THE COURT'S OVERALL CALCULATION OR THE WAY IT  
14 CAME TO ITS CALCULATION, BUT I THINK THE HOWLEY CASE, YOUR  
15 HONOR, IT ALSO TALKS ABOUT THAT THERE, YOU KNOW, WE HAVE  
16 TO FIND A WAY TO CALCULATE, WE HAVE TO FIND A WAY TO  
17 ARTICULATE A PARTICULAR LOSS AMOUNT BECAUSE, AGAIN, THAT'S  
18 WHAT DRIVES THIS CASE; AND AS THE COURT STATED IN THE  
19 FIRST HEARING, THAT REALLY IS THE MAIN THING THAT DRIVES  
20 THIS GUIDELINE RANGE. AND, YES, WE HAVE CERTAIN ENHANCE-  
21 MENTS; BUT WHAT WE HAVE HERE, YOUR HONOR -- AND THE COURT,  
22 YOU KNOW, AS THE HOWLEY CASE SAYS AND AS THE COURT HAS  
23 SAID IN ITS OPINION, I MEAN, THE COURT HAS TO -- DOESN'T  
24 HAVE TO BE EXACT, IT CAN MAKE A REASONABLE ESTIMATE.

25 SO WHEN YOU LOOK AT THAT, YOUR HONOR,

1     ASSUMING -- AND, OBVIOUSLY, JUST FOR THE SAKE OF ARGUMENT,  
2     OBVIOUSLY, WE HAVE A SITUATION HERE WHERE WE HAVE AN  
3     OFFENSE LEVEL OF 41 AND WE'RE DEALING WITH A CRIMINAL  
4     HISTORY CATEGORY OF I, THEN WE LOOK INTO WHY COULD THIS  
5     COURT OR WHAT REASONS SHOULD THIS COURT VARY DOWNWARD.  
6     AND I SHOULD HAVE STARTED MY ARGUMENT WITH SAYING, JUDGE,  
7     IT IS OUR POSITION THAT WE BELIEVE A 36 MONTH SENTENCE OR  
8     A TIME-SERVED SENTENCE IS SUFFICIENT BUT NOT GREATER THAN  
9     NECESSARY, BUT HOW DO WE GET THERE.

10            AGAIN, WHEN YOU LOOK AT THE OVERALL LOSS  
11     AMOUNT, ONE THING THAT THE GOVERNMENT GLOSSED OVER AND DID  
12     NOT ADDRESS WAS OUR CITATIONS REGARDING THE ECONOMIC  
13     REALITY PRINCIPLE; AND I THINK THAT'S VERY, VERY IMPOR-  
14     TANT, YOUR HONOR, IN THIS CASE BECAUSE INSTEAD OF -- I'M  
15     NOT GOING TO QUOTE, YOU KNOW, MCBRIDE AND JORDAN AND ALL  
16     THESE OTHER CASES BECAUSE I KNOW THE COURT IS VERY  
17     FAMILIAR WITH THEM; BUT WHEN WE HAVE A SITUATION AS WE DID  
18     HERE, NOW, IF WE -- YOU KNOW, WE HAVE AN INTENDED LOSS  
19     AMOUNT THAT'S VERY CLEAR THAT'S CALCULATED BY THE COURT,  
20     WELL, THEN WE HAVE TO LOOK AT THE REASONS FOR THE  
21     VARIANCE, AND THE ECONOMIC REALITY PRINCIPLE IS VERY  
22     INSTRUCTIVE HERE. IT'S VERY INSTRUCTIVE, YOUR HONOR,  
23     BECAUSE IF WE ARE TO THE POINT WHERE WE ARE, THERE IS AN  
24     INTENDED LOSS, THEN WE MUST LOOK AT THE OVERALL POTENTIAL  
25     SUCCESS OF THIS ALLEGED SCHEME.

1           THERE'S NOTHING MORE TELLING IN THE RECORD FROM  
2 MR. HUNTER'S QUESTION, QUESTIONS TO ALMOST EVERY VICTIM  
3 COMPANY WHERE HE STATED, IF WE HAVE A RAW MATERIAL  
4 SUPPLIER -- AND I'M PARAPHRASING HERE -- WE HAVE A RAW  
5 MATERIAL SUPPLIER, SEVERAL MILLION DOLLARS IN SEED FUNDING  
6 AND A COMPANY SUCH AS METLAC, CAN THEY COMPETE? CAN THEY  
7 BE A THREAT IN THE INTERNATIONAL MARKET? IT WAS ALMOST A  
8 RESOUNDING YES FROM EACH ONE OF THE INDIVIDUALS FROM THE  
9 WITNESS STAND; BUT WHEN YOU LOOK AT THE TRANSCRIPT, WHEN  
10 YOU LOOK AT THAT STATEMENT, THERE'S NOWHERE ELSE TO LOOK  
11 THAT'S MORE INSTRUCTIVE BUT FROM THE CEO OF METLAC.

12           WHEN YOU HAVE MR. BOCCHIO THAT'S SITTING UP  
13 THERE STATING THAT HE WOULD NEVER DO BUSINESS WITH CHINA,  
14 THIS WAS NEVER GOING TO HAPPEN. ANNA MARIE MAZZILLI  
15 ECHOED THAT, THAT THIS WAS NEVER GOING TO HAPPEN. METLAC  
16 IN THIS CASE, AGAIN, ASSUMING WE'VE GOT TO THIS POINT, BUT  
17 ASSUMING, TAKING THE JURY'S VERDICT FOR WHAT IT IS, METLAC  
18 WAS NEVER GOING TO BE A PLAYER IN THIS; AND THAT'S, THAT  
19 IS UNDISPUTED IN THIS CASE. WE HAVE TESTIMONY THAT THEY  
20 VERY CLEARLY STATED THAT THEY WERE NEVER GOING TO DO  
21 BUSINESS WITH CHINA; THAT THEY WOULD NEVER DO BUSINESS  
22 WITH CHINA.

23           SO IF THAT'S THE CASE, YOUR HONOR, THAT ALONE,  
24 YOU KNOW, THE COURT HAS FOUND AGAIN, NOT TO BE A BROKEN  
25 RECORD, BUT THE COURT HAS CLEARLY FOUND INTENDED LOSS, BUT

1 WHEN YOU LOOK AT THE OVERALL POTENTIAL SUCCESS OF THE  
2 PLAN, IT WAS NEVER GOING TO HAPPEN.

3 THE COURT: SO YOU'RE SUGGESTING THAT IT WAS  
4 IMPOSSIBLE THAT THIS SCHEME WOULD EVER BE COMPLETED?

5 MR. SHIPLEY: I THINK WITH THE FACTS THAT WE  
6 HAVE, YES. YES, THAT'S WHAT I'M SUGGESTING, YOUR HONOR,  
7 BECAUSE IT WAS SUCH AN IMPORTANT PIECE OF TESTIMONY THAT  
8 IT WAS ASKED ALMOST VERBATIM OF EVERY SINGLE VICTIM  
9 COMPANY, IF YOU HAVE METLAC. METLAC WAS KEY. METLAC WAS  
10 DEPOSED IN THIS CASE. THE GOVERNMENT KNEW THAT METLAC WAS  
11 KEY, THAT'S WHY THEY PHRASED THEIR QUESTIONS IN THE WAY  
12 THEY DID; BUT THEN TO THE POINT OF METLAC SAYING THAT IT  
13 WASN'T GOING TO HAPPEN. YOU HAVE THE BIGGEST MANUFACTURER  
14 IN EUROPE ARGUABLY THAT'S STATING THAT NO MATTER WHAT YOU  
15 HAVE, NO MATTER -- WELL, LET ME RESTATE THAT. THEY NEVER  
16 HAD ANYTHING, THAT'S OUR POINT, THEY NEVER HAD ANY OF THE  
17 MATERIAL, AND THAT'S BEEN UNDISPUTED IN THIS CASE.  
18 NOTHING WAS TRANSFERRED, WE KNOW THAT; BUT LET'S JUST SAY,  
19 YOU KNOW, FOR THE SAKE OF ARGUMENT THAT THEY DID. EVEN IF  
20 THEY HAD MATERIAL, YOUR HONOR, IT WAS IMPOSSIBLE TO DO.  
21 YOU HAVE RAW MATERIAL SUPPLIERS, YOU HAVE ALL THIS STUFF  
22 AND YOU HAVE THE FORMULA, IF THEY HAD THE FORMULA, WHICH  
23 THEY NEVER DID, IT WAS GOING TO BE IMPOSSIBLE WITHOUT  
24 METLAC. THAT WAS COMPLETELY UNDISPUTED BY THE TWO  
25 DEPOSITIONS THAT WE HEARD AND WHAT THE JURY HEARD. THAT

1 WAS NEVER GOING TO HAPPEN. SO, YES, MY ARGUMENT WOULD BE  
2 TO THE COURT THAT IT WAS IMPOSSIBLE FOR THAT TO HAPPEN.

3 MOVING ALONG, YOUR HONOR, I'VE TOUCHED A LITTLE  
4 BIT ON THIS, AND I THINK THE COURT IS VERY AWARE OF OUR  
5 POSITION WHEN I TALK ABOUT THE GUIDELINES OVERSTATING THE  
6 SERIOUSNESS OF THIS OFFENSE, AND I WILL ECHO THAT, THAT  
7 WAS THE NEXT PORTION OF MY ARGUMENT, YOUR HONOR. YOU  
8 KNOW, I THINK THE STATEMENT FROM THE CASE LAW, YOU KNOW,  
9 SAYING NOT ALL DOLLARS OF LOSS ARE FUNGIBLE, I THINK  
10 THAT'S VERY INSTRUCTIVE. SENTENCING INDIVIDUALS SHOULD  
11 NOT BE -- OR THE COURT SHOULD NOT RESORT TO A SIMPLE  
12 MECHANICAL APPROACH AND LOOK AT AND TREAT ALL DOLLARS AS  
13 FUNGIBLE BECAUSE THEY'RE NOT. IF THAT WERE THE CASE, YOUR  
14 HONOR, THEN THAT WOULD RENDER THE 3553(A) FACTORS  
15 COMPLETELY USELESS. THERE'S WHAT THE UNDERLYING FLAW IS  
16 IN THE GUIDELINES.

17 AND THE SECOND CIRCUIT, YOU KNOW, YOUR HONOR,  
18 ADDRESSED THAT IN THE ALGAHAIM CASE, YOUR HONOR, WHEN  
19 TALKING ABOUT LOW OFFENSE LEVELS, YOU KNOW, SIGNIFICANTLY  
20 INCREASED BY LOSS AMOUNTS ENTITLES A SENTENCING JUDGE TO  
21 COME IN AND CONSIDER A NON-GUIDELINE SENTENCE. SO IT'S  
22 NOT ONLY MY POSITION, YOUR HONOR, IT'S COMMENTARY TO THE  
23 SENTENCING GUIDELINES, IT'S CRITIQUES ON THE SENTENCING  
24 GUIDELINES TO OTHER CIRCUITS THAT TALK ABOUT, YOUR HONOR,  
25 HOW THAT SIMPLY TREATING THESE AS FUNGIBLE DOLLARS IS NOT

1 PROPER.

2 AND THEN, YOUR HONOR, AFTER YOU TALK ABOUT  
3 THAT, FOR THE REASONS FOR THE VARIANCE, THEN WE HAVE TO GO  
4 INTO AND TALK ABOUT THE, REALLY THE 3553(A) FACTORS AS  
5 WRITTEN IN THE, IN THE STATUTE.

6 HISTORY AND CHARACTERISTICS. YOUR HONOR, WE  
7 HAVE WRITTEN A LOT IN OUR SENTENCING MEMORANDUM, I'M NOT  
8 GOING TO REHASH ALL OF THAT; BUT WE HAVE AN INDIVIDUAL  
9 HERE, YOUR HONOR, THAT, IS MY OPINION, THAT CAME TO  
10 AMERICA AND DID IT THE RIGHT WAY. SHE CAME TO AMERICA,  
11 SHE RENOUNCED HER CHINESE CITIZENSHIP. SHE WAS VERY PROUD  
12 AT THAT POINT TO BE AN AMERICAN, STILL IS.

13 THE COURT: WHAT DO YOU MEAN "AT THAT POINT"?

14 MR. SHIPLEY: STILL IS. THAT'S WHY I WANT TO  
15 SAY THAT, YOUR HONOR, AT THAT POINT WHEN SHE CAME IN AND  
16 RENOUNCED HER CITIZENSHIP, I WAS TALKING ABOUT A TEMPORAL  
17 PORTION IN TIME, AND NOW SHE STILL IS.

18 WE HAVE AN INDIVIDUAL THAT HAS -- AGAIN, WHEN  
19 WE TALK ABOUT, WHEN WE TALK ABOUT OBEYING THE LAW, WE TALK  
20 ABOUT DETERRENCE, AND I KNOW I'M CONFLATING TWO SEPARATE  
21 PORTIONS OF THE GUIDELINE RANGE, BUT THEY'RE SO INEX-  
22 TRICABLY INTERTWINED HERE THAT I CANNOT TALK ABOUT ONE  
23 WITHOUT TALKING ABOUT THE OTHER BECAUSE YOU HAVE AN  
24 INDIVIDUAL HERE THAT IS EDUCATED, THAT HAS DONE IT THE  
25 RIGHT WAY. SHE'S COME TO THE COUNTRY, SHE HAS GAINED HER

1 CITIZENSHIP, SHE HAS BECOME EDUCATED, SHE HAS FOLLOWED THE  
2 LAW HER ENTIRE LIFE. YES, SHE TOOK SOMETHING THAT SHE  
3 SHOULDN'T HAVE TAKEN. SHE HAD SOMETHING THAT SHE  
4 SHOULDN'T HAVE HAD, THAT'S CLEAR. THAT'S SOMETHING THAT  
5 WE DO NOT DISPUTE.

6 NOW, THE MATTER OF TAKING, THAT'S ANOTHER  
7 THING. THE DEFINITION OF "TAKING", SHE TOOK IT, SHE HAD  
8 IT; BUT AT THE END OF THE DAY FOR THE LAW PURPOSES, SHE  
9 HAD IT, SO WE UNDERSTAND THAT; BUT ALBEIT FOR ONE THING IN  
10 HER LIFE SHE HAS DONE NOTHING IN THIS COUNTRY BUT FOLLOW  
11 THE LAW AND BECAME A MODEL CITIZEN. DONE EXACTLY WHAT,  
12 WHAT THIS COUNTRY WAS FOUNDED UPON, HAVING PEOPLE COME TO  
13 THIS COUNTRY TO DO IT THE RIGHT WAY, TO GIVE BACK TO THE  
14 COUNTRY, USE THEIR EXPERTISE TO DO SO.

15 SO HERE WE HAVE AN INDIVIDUAL THAT ANY, ANY  
16 ISSUE WITH RECIDIVISM OR ANYTHING LIKE THAT, I MEAN, EVEN  
17 MR. HUNTER SAID THAT THERE'S NOT REALLY AN ISSUE THAT THEY  
18 HAVE -- EXCUSE ME, NOT MR. HUNTER, MR. WALCZEWSKI, SAID  
19 THAT THERE'S NOT REALLY A, A THREAT OF HER REOFFENDING  
20 FROM A DETERRENT STANDPOINT. I MEAN, AGAIN, ALL THOSE  
21 FACTORS, YOUR HONOR, I THINK THE STATISTICS ARE THAT ONE  
22 WITH ZERO CRIMINAL HISTORY POINTS AS OPPOSED TO SOMEONE  
23 WITH ONE CRIMINAL HISTORY POINT ARE 50 PERCENT LESS LIKELY  
24 TO RECIDIVATE. SO, I MEAN, WHEN YOU LOOK AT THE, WHEN YOU  
25 LOOK UNDER SECTION B OF 3553(A) AND WHEN WE TALK ABOUT,

1 YOU KNOW, THE DETERRENT FACTOR, THERE'S NO ISSUE. I THINK  
2 THE COURT WHEN YOU LOOK AT, OBVIOUSLY, SPECIFIC DETER-  
3 RENCE, THERE SHOULDN'T BE AN ISSUE, EVEN AS MR. WALCZEWSKI  
4 SAID, ABOUT HER REOFFENDING, AND WE HAVE -- AND THE  
5 STATISTICS STATE THAT THE ISSUE WITH HER REOFFENDING ARE  
6 ALMOST NOTHING.

7 BUT WHEN YOU'RE TALKING ABOUT HER AND YOU TALK  
8 ABOUT SOMETHING THAT WE HAVE TO TALK ABOUT ARE THE COL-  
9 LATERAL CONSEQUENCES OF WHAT THIS SENTENCE IS GOING TO DO  
10 TO DR. YOU, SHE'LL NEVER BE ABLE TO WORK IN THE SCIENTIFIC  
11 COMMUNITY AGAIN. SHE'LL BE A CONVICTED FELON. HER, HER  
12 WORK CAREER, HER -- SOMETHING THAT SHE HAS WORKED FOR EVER  
13 SINCE SHE WAS A TEENAGER -- WELL, ACTUALLY WE'LL BACK UP  
14 FURTHER AND EVER SINCE SHE WAS IN SCHOOL, SOMETHING SHE  
15 HAD WORKED FOR, AND WE HAVE TO LOOK AT THAT WHEN YOU LOOK  
16 AT THE COLLATERAL CONSEQUENCES OF WHAT WILL HAPPEN HERE.

17 YOU KNOW, WE BELIEVE THAT THAT 36 MONTH  
18 SENTENCE IS SUFFICIENT, SUFFICIENTLY STATES THAT THAT'S  
19 ENOUGH BECAUSE LET'S JUST SAY, FOR INSTANCE, SHE WALKS OUT  
20 OF HERE TODAY, WALKS OUT OF HERE IN A COUPLE OF MONTHS,  
21 WALKS OUT AFTER SHE IS BOOKED OUT, I MEAN, WHAT DOES SHE  
22 HAVE THERE? SHE CAN'T WORK IN THE SCIENTIFIC COMMUNITY.  
23 I MEAN, ONE OF THE BRIGHTEST MINDS IN THE WORLD WE'RE  
24 DEALING WITH HERE WITH REGARD TO THIS SCIENCE, SHE HAS  
25 THAT BRAND OF A FELON NOW, NOT WORKING FOR ANY OTHER



1 COMPANY; SO, I MEAN, THAT ALONE THERE, I MEAN, WHEN SHE  
2 GETS OUT, I MEAN, WE HAVE TO LOOK AT THAT TOO, THE  
3 COLLATERAL CONSEQUENCES, AND HOW DOES THAT DETER HER?  
4 WELL, YOUR HONOR, IT WOULD BE OUR POSITION THAT IT DETERS  
5 HER GREATLY BECAUSE SHE'S BEEN IN PRISON FOR THREE, FOR  
6 OVER THREE YEARS IN THIS CASE; AND WHEN YOU LOOK AT ALL  
7 THE CASES THAT WE'VE CITED, AGAIN, I CAN GO OVER THEM  
8 INDIVIDUALLY, BUT THREE YEARS WAS ALMOST NEAR THE TOP OF  
9 WHAT THESE PEOPLE RECEIVED.

10 NOW, YES, THERE ARE A COUPLE OF CASES, A COUPLE  
11 OF OUTLIERS, THE ONE THAT MR. WALCZEWSKI CITED, I THINK  
12 THE PERSON RECEIVED IN EXCESS OF 10 YEARS; BUT THEY CITED  
13 THREE CASES, THREE CASES THAT, IT WOULD BE OUR POSITION,  
14 THAT WERE, AGAIN, FAR MORE EGREGIOUS THAN ANY TYPE OF  
15 ALLEGATIONS WE HAVE IN THIS CASE, YOUR HONOR.

16 THEY CITED THE UNITED STATES VERSUS CHUNG CASE.  
17 IN THAT CASE, YOUR HONOR, IT WAS A THREAT TO NATIONAL  
18 SECURITY. I UNDERSTAND THAT WE HAVE PROPRIETARY INFOR-  
19 MATION, AND I'M NOT SAYING THAT THAT'S NOT -- FOR LACK OF  
20 A BETTER WORD, YOUR HONOR, I'M NOT SAYING, I'M NOT SAYING  
21 IT'S NOT A BIG DEAL, BUT I'M SAYING EACH CASE PRESENTS ITS  
22 OWN SET OF FACTS TO THE COURT. WE HAVE A SITUATION IN THE  
23 CHUNG CASE, WE HAVE SOMEONE THAT COLLECTED HIGHLY TECH-  
24 NICAL AEROSPACE AND MILITARY TECHNOLOGY, SOMETHING THAT  
25 WOULD BE -- THAT WAS ACTUALLY, I BELIEVE, IF I'M NOT

1 MISTAKEN, YOUR HONOR, THAT WAS ACTUALLY TRANSFERRED, THAT  
2 WAS ACTUALLY GIVEN TO THE PEOPLE'S REPUBLIC OF CHINA. WE  
3 GO DOWN TO THE --

4 THE COURT: WELL, WITH ALL DUE RESPECT,  
5 MR. SHIPLEY, IF THAT'S WHAT HAPPENED IN THAT CASE, I  
6 SIMPLY DISAGREE WITH THE JUDGE WHO IMPOSED THAT SENTENCE.  
7 THAT'S A RIDICULOUS SENTENCE IF THAT'S WHAT HAPPENED IN  
8 THAT CASE IN MY OPINION BECAUSE WE HAVE A SITUATION HERE  
9 WHERE THE DEFENDANT CONSPIRED TO TRANSFER TO AN ECONOMIC  
10 ENEMY OF THE UNITED STATES, PEOPLE'S REPUBLIC OF CHINA,  
11 VALUABLE TRADE SECRETS. I DON'T -- I'M NOT SURE HOW YOU  
12 CAN DISAGREE WITH WHAT MR. WALCZEWSKI SAID ABOUT THAT NOT  
13 ONLY BEING A BETRAYAL OF HER EMPLOYER, BUT ALSO A BETRAYAL  
14 OF THE COUNTRY; AND IF THAT ONLY WARRANTS A 36 MONTH  
15 SENTENCE, THEN -- I MEAN, HOW DO YOU JUSTIFY A -- LET'S  
16 SET ASIDE LOSS FOR A MINUTE AND JUST LOOK AT WHAT HAPPENED  
17 HERE. WHAT HAPPENED WAS THAT SHE STOLE VALUABLE TRADE  
18 SECRETS, AND SHE INTENDED TO TRANSFER THOSE TO AN ENEMY OF  
19 THE UNITED STATES. NOW, HOW CAN YOU JUSTIFY A 36 MONTH,  
20 TIME-SERVED SENTENCE JUST BASED ON THAT ALONE?

21 MR. SHIPLEY: AND I'LL BE HAPPY TO RESPOND TO  
22 THAT, YOUR HONOR; BUT MY FIRST THING IS IS THAT, AND THIS  
23 IS MEANT TO BE RHETORICAL WHEN I START THIS, BUT I DON'T  
24 KNOW HOW YOU JUSTIFY A 20 YEAR SENTENCE EITHER.

25 THE COURT: WELL, MAYBE NOT; BUT LET'S TALK

1 REALISTICALLY ABOUT WHAT WE'RE TALKING ABOUT HERE. WE'RE  
2 TALKING ABOUT SOMEBODY WHO INTENDED TO AID AN ENEMY OF THE  
3 UNITED STATES.

4 MR. SHIPLEY: YOUR HONOR, WHAT, WHAT OUR  
5 POSITION IS, AND OUR POSITION HAS BEEN FROM THE GET-GO,  
6 THAT THERE WAS NEVER AN INTENT TO AID THIS ENEMY OF THE  
7 UNITED STATES. THAT IS OUR POSITION. IT IS -- IT HAS  
8 BEEN OUR POSITION, IT'S BEEN HER POSITION SINCE DAY ONE,  
9 AND THAT'S OUR POSITION; AND THE THING IS THAT I WILL  
10 PROVIDE TO THE COURT FOR A -- I DON'T KNOW IF IT'S A  
11 JUSTIFICATION, BUT WHEN YOU, WHEN YOU HAVE A SITUATION  
12 WHERE THIS INDIVIDUAL, OKAY, SO WHAT'S THE, WHAT'S THE  
13 PURPOSE, THE PURPOSE HERE, IS IT FOR RETRIBUTION, IS IT  
14 FOR -- IS IT TO FIT THOSE 3553(A) FACTORS, IS IT TO DETER  
15 HER, IS IT TO, IS IT TO, YOU KNOW, SEND A MESSAGE TO THE  
16 COMMUNITY, IS IT TO SEND A MESSAGE FOR A GENERAL  
17 DETERRENCE STANDPOINT? I MEAN, WHEN WE TALK ABOUT AN  
18 INDIVIDUAL THAT -- ASSUMING THE GOVERNMENT AND ASSUMING A  
19 20 YEAR SENTENCE OR WHATEVER THAT MAY BE, SHE'D BE LUCKY  
20 TO EVEN SURVIVE IN PRISON; BUT WHEN I SAY A 3 YEAR  
21 SENTENCE, OKAY, WHAT HAS THAT ACCOMPLISHED? SHE IS --  
22 SHE'LL NEVER BE ABLE TO VOTE. SHE IS NOT -- PRETTY MUCH  
23 RENOUNCING HER CITIZENSHIP, SOMETHING THAT SHE WORKED VERY  
24 HARD TO GET. SHE'LL NEVER BE ABLE TO GET A JOB IN THE  
25 SAME COMMUNITY.

1           NOW, WHO KNOWS, I DON'T KNOW WHO WOULD HIRE  
2 HER, BUT AS MUCH, AS MUCH ATTENTION AS THIS CASE HAS  
3 RECEIVED, I DOUBT IF ANYBODY WOULD, OTHER THAN A VERY,  
4 VERY -- A JOB THAT WAS NOT ANYWHERE NEAR TAKING ADVANTAGE  
5 OF HER EXPERTISE; BUT WE HAVE AN INDIVIDUAL THAT'S BEEN IN  
6 JAIL FOR 3 YEARS. SO IF WE WANT TO TALK ABOUT -- I THINK  
7 IT'S, IT'S A MATTER OF, YOU KNOW, TO THE COURT, YOU ASKED  
8 ME, YOU KNOW, WHY DOES IT WARRANT A 36 MONTH SENTENCE?  
9 WELL, I THINK THAT THAT SATISFIES EVERYTHING THAT 3553(A)  
10 IS SUPPOSED TO SATISFY. IT SAYS THAT WE HAVE A SITUATION  
11 WHERE WE HAVE A WHITE COLLAR OFFENSE.

12           THE COURT HAS SENTENCED HUNDREDS OF PEOPLE IN  
13 WHITE COLLAR OFFENSES, AND THE RESOUNDING -- I THINK I'VE  
14 HEARD THE COURT SAY IT BEFORE, THE RESOUNDING POINT IS IS  
15 THAT PEOPLE BELIEVE THAT PEOPLE THAT COMMIT WHITE COLLAR  
16 OFFENSES, YOU KNOW, GET A SLAP ON THE WRIST OR SOMETHING,  
17 THEY DON'T GET AS MUCH, OR AS HARSH OF A SENTENCE AS,  
18 LET'S SAY, A DRUG DEALER WOULD BECAUSE THE MANDATORY  
19 MINIMUMS AND EVERYTHING ELSE THAT YOU HAVE; BUT HERE YOU  
20 HAVE A SITUATION WHERE WE HAVE AN INDIVIDUAL THAT'S BEEN  
21 IN PRISON, THAT'S BEEN IN JAIL FOR 3 YEARS ON THIS; SO IF  
22 THAT -- DOES THAT, YOU KNOW, WHEN YOU LOOK AT THE NATURE  
23 AND CIRCUMSTANCES OF THE OFFENSE, YOU KNOW, YES, SHE HAD  
24 INFORMATION THAT SHE DIDN'T HAVE, BUT WHAT WE'RE DOING  
25 HERE, AND GOING BACK TO ONE OF THE POINTS THE COURT MADE

1 EARLIER SAYING THAT, YOU KNOW, AM I MAKING THE ARGUMENT  
2 THAT SIMPLY BECAUSE SHE DIDN'T DO IT IT IS LESS SEVERE?  
3 ABSOLUTELY, BECAUSE WE HAVE THESE VICTIM COMPANIES, YOU  
4 KNOW, WE HAVE THE VICTIM COMPANIES HERE, BUT THE ISSUE IS  
5 IS THAT THESE VICTIM COMPANIES ARE NOT DAMAGED, SO THAT --

6 THE COURT: LET ME ASK YOU ONE OTHER QUESTION  
7 IN THAT REGARD, MR. SHIPLEY. IF YOUR POSITION IS THAT SHE  
8 NEVER INTENDED FOR THIS SECRET INFORMATION TO FALL INTO  
9 THE HANDS OF THE CHINESE GOVERNMENT OR AN ENTITY CON-  
10 TROLLED BY THE CHINESE GOVERNMENT, CAN YOU SUGGEST TO ME  
11 WHAT AN ALTERNATE INTENT MIGHT HAVE BEEN?

12 MR. SHIPLEY: ABSOLUTELY. I THINK WHAT WE  
13 HAVE, WHAT WE'VE HEARD AND WHAT THE JURY HEARD WAS THE  
14 MOST MALICIOUS, THE MOST EGREGIOUS THOUGHT PROCESS THAT  
15 THEY COULD HAVE PRESENTED TO THE JURY, AND I THINK EVERY,  
16 EVERY WITNESS SPUN THE ISSUE IN THAT, IN THAT MANNER. WE  
17 HAVE WECHATS, YOUR HONOR, THAT -- THE WECHATS THAT SHE WAS  
18 HELD ACCOUNTABLE FOR WERE WRITTEN TO HER; SO I THINK WHAT  
19 WE HAVE DONE HERE IN THIS, IN THIS CASE, WE HAVE TAKEN A  
20 SITUATION WHERE, YES, IS SHE -- YOU KNOW, IT WOULD STAND  
21 TO REASON THAT A LOT OF THIS INFORMATION FROM THESE  
22 COMPANIES IS -- WAS IN HER HEAD AT THAT TIME, YOUR HONOR.  
23 I MEAN, WE'RE TALKING ABOUT THE PREEMINENT SCIENTIST WHEN  
24 IT COMES TO THIS MATERIAL. SO, YOU KNOW, IS SHE DOING A,  
25 IS SHE WORKING ON IT AS A CONSULTING, AS IN A CONSULTING

1 ASPECT? ARGUABLY, YES. THAT'S AS REASONABLE AS HER  
2 SAYING SHE WAS GOING TO TRANSFER THE MATERIAL.

3 GOING BACK TO MY OPENING STATEMENT, YOUR HONOR,  
4 THAT I GAVE IN THIS CASE, IF SOMEONE INTENDED TO DO SOME-  
5 THING AND IT WAS THERE, IT WAS THERE TO DO, YOU HAD MONEY  
6 THAT YOU WERE THERE, IT WAS ON THE TABLE THAT WAS GOING TO  
7 BE TRANSFERRED TO YOU, THEY KNEW YOU HAD VALUABLE INFOR-  
8 MATION, THEY ASSUMED THAT YOU HAD VALUABLE INFORMATION AND  
9 YOU DIDN'T DO IT. SHE HAD EVERY OPPORTUNITY AFTER  
10 OPPORTUNITY AFTER OPPORTUNITY TO TRANSFER THIS MATERIAL,  
11 SHE DIDN'T. THERE'S NO PROOF IN THE RECORD THAT SHE DID.  
12 SO IN THAT POINT, YOUR HONOR, I THINK THAT'S, THAT IS A  
13 DISTINGUISHING FACTOR IN THIS CASE. SHE HAD EVERY --

14 THE COURT: WHY TAKE IT IN THE FIRST PLACE? IT  
15 DIDN'T BELONG TO HER, WHY TAKE IT IN THE FIRST PLACE?

16 MR. SHIPLEY: AND, YOUR HONOR, I THINK THAT  
17 GOES BACK TO WHAT I STATED EARLIER, WHEN YOU'RE LOOKING  
18 AT -- IF WE'RE TALKING ABOUT TAKING VERSUS HAVING, AGAIN,  
19 AT THE END OF THE DAY THE LAW SAYS THAT SHE HAD IT.

20 THE COURT: WELL, I KNOW SHE'S CHARGED WITH  
21 POSSESSION, BUT THE PROOF IN THE CASE ESTABLISHED THAT SHE  
22 TOOK IT.

23 MR. SHIPLEY: WELL, AND, AGAIN, YOUR HONOR, I'M  
24 NOT TRYING TO ARGUE SEMANTICS HERE OR WHATEVER IT MAY BE,  
25 I'M JUST TRYING TO PROVIDE CONTEXT TO WHAT HAS HAPPENED

1     HERE.  THE ISSUE IS, YOUR HONOR -- AGAIN, THE ONLY THING I  
2     HAVE FOR EXAMPLES ARE SOME OF THESE OTHER CASES, HOW  
3     SOMEONE WENT INTO A HARD DRIVE, WENT INTO A HARD DRIVE AND  
4     ACTIVELY -- THE ACTIVE PART OF THAT WAS TRANSFERRING  
5     MATERIAL FROM THAT HARD DRIVE TO THEIR HARD DRIVE, STUFF  
6     THAT THEY WERE NEVER PRIVY TO IN THE FIRST PLACE.  THAT'S,  
7     THAT'S -- THAT MAY BE A SUBTLE DISTINGUISHING FACTOR, BUT  
8     I THINK IT IS -- TO THE COURT, BUT I THINK IT IS A VERY  
9     BIG DISTINGUISHING FACTOR IN THIS CASE ABOUT WHAT HER  
10    CONDUCT IS, TO PUT HER CONDUCT INTO PERSPECTIVE IN THIS  
11    CASE.  SHE DIDN'T ACTIVELY GO TO A HARD DRIVE SOMEWHERE  
12    AND TAKE THE MATERIAL, THIS MATERIAL WAS GIVEN TO HER.

13               NOW, SHE POSSESSED IT.  DID SHE TRANSFER THAT  
14    TO A PERSONAL DEVICE?  YES, I AGREE; BUT I THINK THERE'S A  
15    DIFFERENCE IN THERE, YOUR HONOR.  WHEN WE LOOK AT LEVEL OF  
16    CULPABILITY, WHEN THE COURT HAS TO DECIDE WHETHER IT'S  
17    GOING TO DEPART UNDER THE ECONOMIC REALITY PRINCIPLE OR  
18    IT'S GOING TO VARY UNDER THE GUIDELINES BEING A LITTLE  
19    FLAWED IN THEIR REASONING, THE COURT HAS TO TAKE INTO  
20    CONSIDERATION THE NATURE AND THE CIRCUMSTANCES OF THE  
21    OFFENSE; NOT JUST WHAT THE JURY DECIDED, WE HAVE TO TALK  
22    ABOUT EVERYTHING THAT HAPPENED IN THIS CASE; AND WHEN WE  
23    LOOK AT THIS OFFENSE AND EVERY ELEMENT, EVERY THING, EVERY  
24    ACT THAT WAS EVER DONE IN THIS CASE, I THINK IT'S VERY  
25    IMPORTANT AND A DISTINGUISHING FACTOR FOR DR. YOU.

1                   SO DO I THINK THAT, YES, DO I THINK SHE HAD THE  
2 MATERIAL SHE WAS CHARGED WITH POSSESSING, YEAH, BUT I  
3 DISAGREE THAT THE PROOF AT TRIAL WAS THAT SHE TOOK IT, I  
4 THINK THAT SHE HAD IT BECAUSE SHE WAS --

5                   THE COURT: THE PROOF AT TRIAL WAS THAT SHE  
6 DOWNLOADED IT TO HER PERSONAL DEVICE.

7                   MR. SHIPLEY: AGREE, BUT THERE'S A DIFFERENCE.  
8 SHE DID NOT HAVE IT AT THAT POINT UNLAWFULLY, SHE DID NOT  
9 SEEK IT UNLAWFULLY; AND, YOUR HONOR, I UNDERSTAND THE  
10 COURT'S POINT, BUT OUR POINT IS, YOUR HONOR, THAT, YES,  
11 SHE MAY HAVE DOWNLOADED IT TO A PERSONAL COMPUTER, BUT I  
12 THINK THE DISTINGUISHING FACTOR WHEN YOU LOOK AT THE OTHER  
13 CASES, WHEN YOU'RE PUTTING THIS CASE INTO PERSPECTIVE, YOU  
14 HAVE A SITUATION WHERE SHE LAWFULLY HAD IT, SHE PUT IT ON  
15 A COMPUTER, HER PERSONAL COMPUTER, THAT SHE SHOULDN'T  
16 HAVE, ABSOLUTELY, BUT SHE DID NOT ACTIVELY SEEK SOMETHING  
17 THAT SHE WAS NOT PRIVY TO IN THE FIRST PLACE.

18                  THE COURT: WELL, WITH ALL DUE RESPECT IF IT  
19 WAS ALL IN HER HEAD, SHE DIDN'T NEED THE DOCUMENTS IN THE  
20 FIRST PLACE, SO WHY TAKE IT?

21                  MR. SHIPLEY: YOUR HONOR, THE EXPLANATION THAT  
22 I WOULD PROVIDE FOR THAT, I DON'T KNOW IF THE COURT WAS  
23 INQUIRING, BUT I'M HAPPY TO PROVIDE AN EXPLANATION, YOU  
24 KNOW, WE HAVE A SITUATION WHERE SHE HAS DONE THIS, THIS IS  
25 HER, THIS IS HER LIFE'S WORK. I MEAN, THIS IS SOMETHING



1 THAT SHE HAS LITERALLY DONE, SOMETHING SHE HAS WORKED  
2 TIRELESSLY ON TO MAKE IT TO THE POINT SHE WAS AT. WAS IT  
3 SOMETHING THAT SHE HAD WITH THE INTENT TO GIVE TO THE  
4 FOREIGN INSTRUMENTALITY? IT WOULD BE OUR POSITION, YOUR  
5 HONOR, IT WASN'T BECAUSE WE THINK THAT IF SHE WAS GOING TO  
6 DO IT AT THAT POINT IN TIME DURING THIS INVESTIGATION, SHE  
7 WOULD HAVE DONE IT. THAT'S, YOU KNOW, THAT IS -- WHEN YOU  
8 LOOK AT, WHEN YOU BOIL THIS DOWN TO ITS FINITE PRINCIPLES,  
9 WHEN YOU LOOK AT JUST SHEER LOGIC, IF YOU HAVE MILLIONS OF  
10 DOLLARS, AS THE GOVERNMENT HAS ARGUED AT TRIAL, AS THEY'VE  
11 ARGUED HERE AT SENTENCING, IF YOU HAVE MILLIONS OF DOLLARS  
12 ON THE TABLE THAT CAN BE YOURS, AND ALL YOU HAVE TO DO IS  
13 SEND THE INFORMATION, IF YOU WANT TO DO IT, WHAT, WHAT,  
14 WHAT'S STOPPING IT?

15 THE COURT: WELL, YOU WANT TO GET PAID BEFORE  
16 YOU SEND IT; DON'T YOU?

17 MR. SHIPLEY: MAYBE SO; BUT THE FACT OF THE  
18 MATTER IS IS THAT WE, YOU AND I, THE COURT, WE CAN SIT  
19 HERE AND THINK OF A MILLION DIFFERENT PERMUTATIONS OF THAT  
20 AND SAY THIS COULD BE AN ISSUE, THIS COULD BE AN ISSUE,  
21 THIS COULD BE AN ISSUE; BUT WHAT DO WE HAVE TO LOOK AT?  
22 THE FACT IS IT WASN'T DONE. SO THAT'S WHY WE BELIEVE,  
23 YOUR HONOR, THAT WHEN I SAY THIS CASE IS LESS SEVERE, WHEN  
24 I SAY THIS CASE IS LESS SERIOUS THAN SOME OF THESE OTHER  
25 CASES, THAT'S WHY.

1            THAT WAS THE INTENT OF WHAT WE'VE PROVIDED TO  
2            THE COURT IN OUR MEMORANDUM THAT WE SUBMITTED, SHOWING THE  
3            COURT THAT EVERY SITUATION -- WHEN THE COURT, AND, UN-  
4            DOUBTEDLY, THE COURT WILL GO THROUGH EACH OF THE 3553(A)  
5            FACTORS; BUT WHEN THE COURT LOOKS AT THE NATURE AND  
6            CIRCUMSTANCES OF THIS OFFENSE, IT'S VERY INSTRUCTIVE TO  
7            LOOK AT WHAT HAS ACTUALLY HAPPENED IN THIS CASE, TO  
8            PROVIDE, IF NOTHING ELSE, CONTEXT; AND, YOUR HONOR, FOR  
9            THAT WE BELIEVE THAT A 36 MONTH SENTENCE IN THIS CASE IS  
10          FAR MORE SUFFICIENT THAN WHAT IS NECESSARY IN THIS CASE  
11          WHEN YOU LOOK AT EVERY SINGLE THING THAT'S GOING TO  
12          HAPPEN. AT ONE POINT IN TIME DR. YOU WILL BE RELEASED  
13          FROM JAIL. IF WE'RE LOOKING AT PUNISHING HER, SETTING A  
14          STANDARD IN THE COMMUNITY AND SOMEONE HAS TO SPEND OVER 3  
15          YEARS IN JAIL, IT IS OUR OPINION TO THE COURT THAT THAT IS  
16          SUFFICIENT BUT NOT GREATER THAN NECESSARY TO COMPLY WITH  
17          THE FACTORS SET OUT IN 3553(A).

18            THE COURT: ALL RIGHT, MR. SHIPLEY, THANK YOU.

19            MR. WALCZEWSKI, DO YOU WANT TO MAKE ANY  
20          RESPONSE BEFORE I HEAR THE DEFENDANT'S ALLOCUTION?

21            MR. WALCZEWSKI: I'LL KEEP IT BRIEF, JUDGE.

22            THE COURT: ALL RIGHT.

23            MR. WALCZEWSKI: ONE THING JUST TO START OUT,  
24          MR. SHIPLEY WAS MENTIONING THE DONGFAN CHUNG CASE, THAT  
25          WAS THE AEROSPACE ONE, NATIONAL SECURITY SECRETS, JUST TO

1 CLARIFY, THAT WAS ONE OF THE 1831 CASES THAT WE CITED, AND  
2 MR. CHUNG DID RECEIVE A 180 MONTH SENTENCE UNDER 1831, SO  
3 I JUST WANTED TO MAKE SURE THAT WAS CLEAR.

4 BEYOND THAT THOUGH, IT SOUNDS LIKE THE  
5 DEFENDANT HAS SOME, SOME ISSUES WITH THE WAY THAT THE  
6 GUIDELINES ARE CONSTRUCTED, PARTICULARLY WITH REGARD TO  
7 LOSS. THE GUIDELINES ARE CAREFULLY THOUGHT OUT, THEY'RE  
8 REGULARLY UPDATED, THEY ARE ADVISORY, THE COURT IS  
9 REQUIRED TO TAKE THEM INTO ACCOUNT.

10 AS YOU KNOW, BASED UPON YOUR OPINION, THERE'S A  
11 HIGH INTENDED LOSS IN THIS CASE BECAUSE OF THE VALUE OF  
12 THE TRADE SECRETS AND THE NUMBER OF THE VICTIMS, SEVEN  
13 VICTIM COMPANIES. TO THE EXTENT THAT THE DEFENDANT IS  
14 ARGUING THAT INTENDED LOSS IS LESS SERIOUS THAN ACTUAL  
15 LOSS, IT SOUNDS LIKE THAT'S AN ARGUMENT THAT IF YOU GET  
16 CAUGHT EARLY, YOU SHOULD HAVE A LOWER SENTENCE; AND, YOU  
17 KNOW, FRANKLY, THAT'S, THAT'S A LITTLE, THAT'S A LITTLE  
18 ABSURD, AND IT DOESN'T MAKE ANY SENSE, ESPECIALLY FROM A  
19 DETERRENCE STANDPOINT, FOR INDIVIDUAL DETERRENCE OR  
20 DETERRENCE FROM OTHERS SIMILARLY SITUATED, BECAUSE AT THE  
21 TIME THAT YOU'RE CONSPIRING TO COMMIT A CRIME NOBODY, NO  
22 ONE THINKS THEY'RE GOING TO GET CAUGHT. SO THE IDEA THAT  
23 JUST BECAUSE IF YOU GET CAUGHT BEFORE YOU'RE ABLE TO  
24 ACTUALLY COMPLETE YOUR CRIME, THAT YOU SHOULD GET A LOWER  
25 SENTENCE, THAT'S JUST NOT BORN OUT BY THE GUIDELINES, AND,

1 FRANKLY, THE GOVERNMENT SUGGESTS IT DOES NOT MAKE SENSE.

2 A FEW OTHER, A FEW OTHER POINTS. MR. SHIPLEY  
3 SEEMED TO BE MAKING THE POINT THAT IT'S A LESS SERIOUS  
4 CRIME BECAUSE THE DEFENDANT WAS, WAS ENTRUSTED BY HER  
5 EMPLOYERS AT SOME POINT TO POSSESS THESE TRADE SECRETS.  
6 IT SOUNDS TO US LIKE THAT'S ACTUALLY ARGUABLY MORE SERIOUS  
7 THAN IF SOMEBODY WAS TO JUST STEAL THEM WITHOUT HAVING  
8 BEEN ENTRUSTED WITH THEM; AND JUST TO BE CLEAR, OBVIOUSLY,  
9 YOUR HONOR SAT THROUGH THE TRIAL, BUT THIS IS NOT JUST A  
10 CASE OF SOME FILES THAT SHE PUT ON HER COMPUTER AND FORGOT  
11 ABOUT. WE HAD, WE HAD THE UPLOADS FROM THE COCA-COLA  
12 COMPANY NETWORK THAT SHE TRIED TO DO IT ONE WAY AND THAT  
13 WAS BLOCKED BY THE SYSTEM AND THEN LATER ON SHE WAS OFF  
14 HOURS AND UPLOADS TO THE GOOGLE FILE, AND THAT'S FROM THE  
15 COCA-COLA NETWORK; AND THEN WITH REGARD TO THE HARD DRIVE  
16 THAT WAS FOUND AT THE ARREST, MR. RINALDI'S TESTIMONY  
17 SHOWED THAT THERE WERE FILES THAT HAD BEEN RENAMED TO  
18 REMOVE VICTIM COMPANY IDENTIFIERS AND, YOU KNOW, HIGHLY  
19 CONFIDENTIAL MARKINGS THAT HAD BEEN REMOVED. SO THIS  
20 ISN'T JUST A CASE OF SHE WAS TRUSTED WITH SOME DOCUMENTS,  
21 SHE MIGHT HAVE STORED THEM SOMEWHERE WHERE SHE WASN'T  
22 SUPPOSED TO AND THEN FORGOT ABOUT THEM, THIS IS NOT, THIS  
23 IS NOT THAT CASE.

24 AND, AGAIN, I BELIEVE THAT AT ONE POINT  
25 MR. SHIPLEY SAID THAT WHEN, WHEN SHE WAS CONFRONTED ABOUT

1 THE STOLEN TRADE SECRETS, SHE TURNED THEM OVER. WELL, SHE  
2 DIDN'T TURN OVER ALL OF THEM. OF COURSE, WE HAVE THE  
3 LANSING HARD DRIVE THAT WAS FOUND AT HER ARREST THAT STILL  
4 CONTAINED THE HEART OF THE TRADE SECRETS ON THEM.

5 MR. SHIPLEY SPENT A FAIR AMOUNT OF TIME ARGUING  
6 THAT THERE WAS IN FACT NO TRANSFER OF THESE TRADE SECRETS,  
7 THAT IS NOT THE GOVERNMENT'S POSITION. OUR POSITION IS  
8 JUST THAT WE CAN'T PROVE THAT TRANSFER, AND I THINK YOU  
9 UNDERSTAND THAT, BUT I JUST WANT TO MAKE THAT POINT. YOU  
10 KNOW, SHE TRAVELED TO THE PRC TO PRESENT IN SUPPORT OF HER  
11 THOUSAND TALENTS APPLICATION, SHE WAS MESSAGING WITH HER  
12 FAMILY ABOUT ALL THE RISKS THAT SHE WAS TAKING, YOU KNOW,  
13 SHE WAS PAID BY WEIHAI JINHONG GROUP AND SHE LIED ABOUT  
14 IT. SO, AGAIN, WE CAN'T PROVE THE TRANSFER, BUT OUR  
15 POSITION IS NOT THAT IT AS A MATTER FACT DID NOT HAPPEN, I  
16 JUST WANT TO MAKE THAT CLEAR.

17 AND, FINALLY, THE SUGGESTION THAT THERE WAS,  
18 THERE WAS TESTIMONY THAT THIS PLAN WAS IMPOSSIBLE AND WAS  
19 NEVER GOING TO HAPPEN, THAT, THAT WAS NOT THE TESTIMONY AT  
20 TRIAL. IN FACT, WHEN THE VICTIM, WHEN THE VICTIM  
21 COMPANIES WERE ASKED THE QUESTION THAT MR. HUNTER KEPT  
22 REFORMULATING, THE ANSWER THAT HE CONSISTENTLY GOT WAS NOT  
23 THAT IT WAS IMPOSSIBLE, WAS THAT IT WAS IN FACT POSSIBLE;  
24 AND WHETHER IT WAS GOING TO HAPPEN WITH METLAC OR HAPPEN  
25 IN SOME OTHER FASHION, THE EVIDENCE AT TRIAL INDICATED

1 THAT THIS WAS A FEASIBLE PLAN AND THAT THE DEFENDANT  
2 INTENDED TO CARRY OUT, AND THE JURY FOUND THAT.

3 MAY I JUST CONSULT WITH COCOUNSEL BRIEFLY?

4 THE COURT: YOU MAY.

5 MR. WALCZEWSKI: THAT'S ALL I HAVE, JUDGE.  
6 AGAIN, WE SUBMIT A 240 MONTH SENTENCE IS APPROPRIATE IN  
7 THIS CASE.

8 THE COURT: MR. SHIPLEY ALSO MENTIONED THE LATE  
9 SUPERSEDING INDICTMENT, WHICH IS SOMETHING WE'VE TALKED  
10 ABOUT A GOOD BIT ALREADY IN THIS CASE, BUT THE AMENDMENT  
11 IN THE INDICTMENT TO ADD THE ECONOMIC ESPIONAGE CHARGES  
12 GIVEN YOUR RECOMMENDATION FOR 240 MONTHS DIDN'T REALLY  
13 CHANGE THE POTENTIAL SENTENCE SHE WOULD FACE; CORRECT,  
14 BECAUSE SHE FACED A 20 YEAR MAXIMUM ON THE WIRE FRAUD  
15 COUNT ITSELF?

16 MR. WALCZEWSKI: THAT'S RIGHT, JUDGE. AND AS  
17 YOU KNOW, WE'RE RECOMMENDING, IT'S A 15 MONTH MAXIMUM ON  
18 1831, A 10 MONTH MAXIMUM -- 15 YEAR MAXIMUM ON THE 1831,  
19 THE 10 YEAR MAXIMUM ON 1832 AND A 20 YEAR MAXIMUM ON THE  
20 WIRE FRAUD. SO WHAT WE WERE GETTING AT, JUDGE, IF WE HAD  
21 TRIED THIS CASE WITH NO 1831 COUNT, FRANKLY, SHE WOULD  
22 HAVE GOTTEN ALL THE SAME ENHANCEMENTS. SHE COULD HAVE  
23 RECEIVED THE ENHANCEMENT FOR INTENT TO BENEFIT A FOREIGN  
24 GOVERNMENT, EVEN WITHOUT AN 1831 CONVICTION, WHICH IS WHAT  
25 HAPPENED IN THE SHAN SHI CASE, WHICH I BELIEVE IS WHERE HE

1 WAS ACQUITTED OF THE 1831, BUT STILL THE JUDGE NOTED THAT  
2 THERE WAS AN INTENT TO BENEFIT A FOREIGN GOVERNMENT; SO,  
3 YES, IF THE INTENDED LOSS HAD COME OUT THE SAME, WHICH WE  
4 HAVE NO REASON TO BELIEVE THAT IT HADN'T AND IT WOULDN'T  
5 IN ABSENCE OF AN 1831 COUNT, THE GUIDELINES RANGE WOULD BE  
6 THE SAME.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. WALCZEWSKI: THANK YOU.

9 THE COURT: I'LL GIVE YOU THE LAST WORD IF YOU  
10 WANT IT, MR. SHIPLEY, BEFORE I HEAR THE DEFENDANT.

11 MR. SHIPLEY: YOUR HONOR, WITH ANY -- YOU KNOW,  
12 WITH REGARD TO THAT ECONOMIC ESPIONAGE, THAT WAS SIMPLY A  
13 RESPONSE TO THE GOVERNMENT'S SUPPLEMENTAL SENTENCING  
14 MEMORANDUM THAT THEY FILED. AND, ANYWAY, IT SEEMED TO ME  
15 AT THAT POINT IN TIME THEY WERE DISTINGUISHING CASES THAT  
16 WE FILED AND SAYING THAT THAT FOR SOME REASON DID NOT  
17 INCLUDE ECONOMIC ESPIONAGE, THEREFORE, MAKING ECONOMIC  
18 ESPIONAGE, IF IT WAS FOUND, MAKING IT MORE SEVERE. IT WAS  
19 MY POSITION TO THE COURT JUST DISTINGUISHING THOSE THAT IN  
20 ANY OF THOSE CASES THAT WE CITED, THE MAJORITY OF THOSE  
21 CASES ACTUALLY BENEFITED A FOREIGN INSTRUMENTALITY AND  
22 COULD VERY WELL HAVE BEEN CHARGED UNDER THE ECONOMIC  
23 ESPIONAGE; THAT'S THE POINT THAT I WAS TRYING TO MAKE  
24 THERE, YOUR HONOR.

25 THE COURT: WELL, MR. WALCZEWSKI'S POINT IS

1 ALSO WELL TAKEN, ISN'T IT, THAT THAT IS THAT THE STATUTORY  
2 MAXIMUM OF 20 YEARS STILL EXISTED FOR THE WIRE FRAUD COUNT  
3 AND THE GUIDELINE RANGE LIKELY WOULD HAVE COME OUT AT THE  
4 SAME PLACE WITHOUT THOSE?

5 MR. SHIPLEY: YES, YOUR HONOR. ANY INSINUATION  
6 THAT SIMPLY PUTTING THE STAMP OF ECONOMIC ESPIONAGE ON A  
7 CASE, WE WOULD TAKE ISSUE WITH THAT.

8 THE COURT: ALL RIGHT.

9 MR. SHIPLEY: THANK YOU.

10 THE COURT: ALL RIGHT. DR. YOU, COME UP TO THE  
11 PODIUM, PLEASE, WITH YOUR ATTORNEY.

12 THE DEFENDANT: YES.

13 IS THERE ANYTHING YOU WISH TO SAY TO THE COURT  
14 TODAY BEFORE SENTENCE IS IMPOSED?

15 THE DEFENDANT: WHAT DID YOU SAY?

16 THE COURT: IS THERE ANYTHING YOU WISH TO  
17 SAY --

18 THE DEFENDANT: YES.

19 THE COURT: -- BEFORE I IMPOSE SENTENCE?

20 THE DEFENDANT: YES.

21 THE COURT: ALL RIGHT. GO RIGHT AHEAD.

22 THE DEFENDANT: YOUR HONOR, I WOULD LIKE TO  
23 TAKE THIS OPPORTUNITY TO TELL YOU THE FACTS SURROUNDING MY  
24 CASE. WHEN I GREW UP, MY PARENTS ALWAYS TAUGHT ME NO  
25 MATTER IF PEOPLE WERE RICH OR POOR, NOBLE OR HUMBLE,



1 EVERYONE WAS OF EQUAL STATUS.

2 COURT REPORTER: I'M SORRY.

3 THE COURT: THE COURT REPORTER HAD A HARD TIME  
4 UNDERSTANDING YOU. SHE SAID BASICALLY THAT NO MATTER  
5 WHETHER PEOPLE WERE NOBLE OR HUMBLE, THEY HAD AN EQUAL  
6 OPPORTUNITY, I BELIEVE IS WHAT SHE SAID. IS THAT CORRECT?

7 THE DEFENDANT: CORRECT.

8 THE COURT: ALL RIGHT.

9 THE DEFENDANT: BEFORE 1990, CHINA WAS A  
10 DEVELOPING COUNTRY AND HAD VERY POOR ECONOMY. LIKE MOST  
11 CHINESE, MY FAMILY LIVED WITH FOOD AND SUPPLY IN RATION,  
12 TINY APARTMENT, POOR SALARIES. I WATCHED MY PARENTS  
13 STRUGGLE WITH TIGHT BUDGET TO RAISE THREE DAUGHTERS, HELP  
14 GRANDPARENTS AND OTHERS AS PART OF AN UNFORGETTABLE  
15 EXPERIENCE. AS THE OLDEST CHILD IN THE FAMILY, I LEARNED  
16 TO TAKE CARE OF MY SISTERS, CHORES AROUND HOME AS A YOUNG  
17 KID. FAMILY BOND, UNCONDITIONAL LOVE FROM MY PARENTS AND  
18 FAMILY, SUPPORT EACH OTHER AND HELP OTHERS BECAME PART OF  
19 MY DNA. THROUGH MY SCHOOL YEAR, I WAS ALWAYS AT THE TOP  
20 OF MY CLASS, PEOPLE REMEMBERED ME AS A TALENTED, WELL-  
21 ROUND AND CARING PERSON. AFTER GRADUATED FROM HIGH  
22 SCHOOL, I WAS ACCEPTED BY THE BEST UNIVERSITY, TSINGHUA  
23 UNIVERSITY, IN CHINA IN JULY '80 AND COMPLETED BACHELOR  
24 DEGREE IN '85.

25 IT WAS MY DREAM TO COME TO THE UNITED STATES,

1 THE SYMBOL OF EQUALITY AND DEMOCRACY TO THE WORLD. THANKS  
2 TO THE SCHOLARSHIP FROM KENT STATE UNIVERSITY IN OHIO, I  
3 WAS ABLE TO COME TO U.S. FOR MY GRADUATE STUDY IN JANUARY  
4 1990 AND EVENTUALLY OBTAINED MASTER AND DOCTORATE DEGREES  
5 FROM U.S. UNIVERSITIES.

6 WHEN I CAME TO U.S. ON JANUARY 13, 1990, WITH A  
7 SUITCASE AND COUPLE HUNDRED DOLLARS, I COULD HARDLY  
8 UNDERSTAND PROFESSORS' LECTURES AND SPEAK -- SPOKE BROKEN  
9 ENGLISH. WORKED DAY AND NIGHT, I WAS ABLE TO SPEAK GOOD  
10 ENGLISH WITHIN SIX MONTHS.

11 I COMPLETE DOCTORATE DEGREE WHILE I WAS FULL  
12 TIME WORKING. FOR FIVE YEARS, ALL EVENINGS, WEEKEND,  
13 VACATIONS WERE DEVOTED TO COMPLETE DOCTORATE DEGREE. HARD  
14 WORK WAS PAID OFF. I WAS ABLE TO OBTAIN DOCTORATE DEGREE  
15 AND FIVE YEARS WORKING EXPERIENCE AT THE SAME TIME. THIS  
16 EXPERIENCE REWARDED ME ENORMOUSLY IN MY CAREER FOR IN  
17 DEPTH UNDERSTANDING CUSTOMERS, BUSINESS NEED AND FULLY  
18 RECOGNIZED BY MANAGEMENT IN EACH JOB FOR NEARLY THIRTY  
19 YEARS AS A LEADING SCIENTIST CAN DELIVER NO MATTER WHAT  
20 PROJECTS WERE ASSIGNED TO ME.

21 IN OCTOBER 1999 I GAVE UP MY CHINESE  
22 CITIZENSHIP AND BECAME A PROUD U.S. CITIZEN.

23 DURING MY NEARLY 30 YEARS OF WORKING IN U.S., I  
24 CONTRIBUTED 42 PATENT APPLICATIONS TO BENEFIT CONSUMERS TO  
25 SEVERAL LEADING COMPANIES AND MADE SIGNIFICANT

1 CONTRIBUTIONS TO DEVELOP BREAK-THROUGH TECHNOLOGIES IN  
2 SEVERAL INDUSTRIES.

3 BECAUSE THE REPUTATION AND RECOGNITION I HAD IN  
4 THE POLYMER COATING FIELD, I WAS HIRED BY THE COCA-COLA  
5 COMPANY IN DECEMBER 2012 TO LEAD WORK ON SOLUTIONS FOR  
6 FRENCH BPA BAN WHICH TOOK PLACE ON JANUARY 1, 2015. AS MY  
7 COKE MANAGER, YU SHI, TESTIFIED THAT TO ACCELERATE THE  
8 COATING DEVELOPMENT, COKE'S MANAGER -- MANAGEMENT IN 2013  
9 REQUESTED THAT THE SUPPLIERS PROVIDED DETAILED INFORMA-  
10 TION. THE COKE PROJECT TEAM SPECIFIED WHAT INFORMATION  
11 WAS NECESSARY FOR THEM TO PERFORM THEIR TASKS. AS A  
12 TECHNICAL LEADER, EXPERT AND GATEKEEPER, PER MANAGEMENT'S  
13 REQUEST I WAS RESPONSIBLE WITH COMMUNICATING WITH EACH  
14 SUPPLIER TO ACQUIRE DETAILS, PRESENTING THE CHEMISTRIES TO  
15 OTHER FUNCTIONAL GROUPS IN COKE, AND SETTING UP APPRO-  
16 PRIATE TESTS AT COKE FACTORIES. FURTHERMORE, IT WAS ALSO  
17 MY RESPONSIBILITY TO EXPLAIN THE DATA, IDENTIFY PROBLEMS  
18 AND PROVIDE FEEDBACK, GUIDANCE TO EACH COATING SUPPLIER SO  
19 THAT THEY COULD IMPROVE THEIR COATINGS.

20 DURING NEARLY FIVE YEARS WORKING IN COKE, I  
21 GUIDED EACH SUPPLIER TO ADVANCE THEIR COATINGS. FOR  
22 EXAMPLE, GOVERNMENT WITNESS MR. LESCHNIK FROM AKZO SAID  
23 AKZO WAS TRULY BEHIND. THE OLD FORMULATION DEVELOPED  
24 BEFORE 2013 HAD SEVERE FLAVOR SCALPING PROBLEM, FLAVOR  
25 SCALPING MEANS ABSORB THE FLAVOR FROM THE BEVERAGE, UP TO

1 60 PERCENT, AND SELECTIVELY ABSORBING KEY INGREDIENTS FROM  
2 COKE'S FANTA PRODUCTS. I GUIDED THEIR TEAM FROM SELECTING  
3 COMPOUNDS, SUGGESTING NEW TESTING METHODS, AND NOVEL  
4 IDEAS. AKZO TEAM EXPRESSED THEIR APPRECIATION TO MY COKE  
5 MANAGEMENT TEAM AND MYSELF, ACKNOWLEDGED MY IDEA LEAD TO  
6 THEIR SECOND GENERATION PRODUCTS. THEY VOLUNTEERED TO SET  
7 UP BIWEEKLY MEETING TO DISCUSS RESULTS AND IDEAS WITH ME.  
8 MR. LESCHNIK SENT, SENT E-MAILS THANKING MY HELP FOR THEIR  
9 TEAM, DESPITE HE WAS IN MARKETING ROLE, NOT INVOLVED IN MY  
10 DAY-TO-DAY DISCUSSIONS WITH THEIR TEAM.

11 DOW HAS BEEN DEVELOPING THEIR POD FORMULATION  
12 SINCE 2008. WHEN WE TESTED IN JULY 2013, THEIR POD  
13 COATING HAD SEVERE FLAVOR SCALPING PROBLEM. I GUIDED  
14 THEIR TEAM REDESIGN THEIR POD BY INCREASING CRYSTALLINITY.  
15 THE REDESIGNED FORMULATION IN 2014 HAD PARITY FORMULATION  
16 -- HAD PARITY PERFORMANCE IN FLAVOR TO BPA EPOXY CAN  
17 COATING. DURING SCALE-UP TESTING OF THEIR REDESIGNED POD  
18 COATING IN COKE'S PILOT PLANT, IT HAD SEVERE FOAMING  
19 PROBLEM. BEVERAGE CANNOT BE FILLED TO THE TOP OF THE  
20 CLASS -- TO THE TOP OF THE CANS. I GUIDED THEIR TEAM  
21 SELECTING ADDITIVE, SOLVED THE FOAMING PROBLEM WITHIN  
22 THREE TO FOUR WEEKS, WHICH CAN EASILY TAKE SIX TO TWELVE  
23 MONTHS WITHOUT MY GUIDANCE. DOW'S MANAGEMENT EXPRESSED  
24 THEIR APPRECIATIONS TO MY COKE MANAGEMENT. MY GUIDANCE  
25 MADE IT POSSIBLE THAT REDESIGNED POD WAS APPROVED BY COKE

1 TO HAVE SIMILAR PHYSICAL AND FLAVOR PERFORMANCE TO BPA  
2 EPOXY CAN COATING.

3 MY IDEA AND GUIDANCE TO EACH SUPPLIER SIGNIFI-  
4 CANTLY IMPROVED THEIR COATINGS TO BECOME POTENTIAL  
5 COMMERCIAL COATINGS, THAT WAS THE REASON EACH SUPPLIER  
6 CAME TO SEE ME REGULARLY TO DISCUSS IDEAS, RESULTS TO SEEK  
7 MY GUIDANCE. MY COKE MANAGEMENT RECEIVED GOOD FEEDBACK  
8 FROM EACH SUPPLIER FOR MY GUIDANCE AND ACKNOWLEDGED THAT  
9 MY HELP SIGNIFICANTLY ACCELERATED THEIR DEVELOPMENT. I  
10 GOT REWARD FROM COKE MANAGEMENT IN MID 2016 FOR MY  
11 CONTRIBUTIONS IN BPA-FREE PROJECT. AS MY COKE MANAGER, YU  
12 SHI, TESTIFIED I AM A GOOD SCIENTIST, A PROFESSIONAL,  
13 DELIVERED PROJECT.

14 I AM VERY PROUD OF MY CONTRIBUTION TO COKE AND  
15 EACH SUPPLIER. WHEN I LEFT COKE, I KEPT SOME FILES AS  
16 RESUME AND WORK RECORD TO REFLECT MY, MY ACCOMPLISHMENTS  
17 SINCE I WAS A MAJOR CONTRIBUTOR. I HAD NO INTENTION TO  
18 DISCLOSE THEM AND NEVER SHARED THEM WITH ANYONE. AS  
19 MR. HUESKEN AND MR. BAKER, THEIR GOVERNMENT WITNESS FROM  
20 COKE, TESTIFIED, THOUSANDS OF FILES WERE DOWNLOADED BY  
21 HUNDREDS OF PEOPLE IN COKE DURING THAT TWO MONTH PERIOD  
22 AND COKE DID NOT SEE ANY PROBLEM.

23 DURING MY TEN MONTHS EMPLOYMENT AT EASTMAN, I  
24 WAS NEVER INVOLVED IN FORMULATION DEVELOPMENT BUT MARKET-  
25 ING. EASTMAN WANTED TO USE MY REPUTATION IN BPANI,

1 BPA-FREE COATING TO HELP THEM OPEN THEIR BPA-FREE MARKET,  
2 ESPECIALLY IN ASIA. MY KNOWLEDGE IN BPA-FREE MARKETING  
3 AND CREDIBILITY IN CONVINCING CUSTOMERS WERE FULLY  
4 ACKNOWLEDGED BY EASTMAN UPPER MANAGEMENT. DR. CHRIS  
5 KILLIAN, DR. BHATTACHARYA'S BOSS, SET UP MONTHLY MEETING  
6 WITH ME TO DISCUSS BPA-FREE PROJECT AND ALWAYS GAVE GOOD  
7 FEEDBACK FOR MY PERFORMANCE AND PRAISED ME, BROUGHT  
8 CREDIBILITY FOR EASTMAN TEAM.

9 WHEN I REALIZED THAT MY EMPLOYMENT AT EASTMAN  
10 COULD BE SUDDENLY TERMINATED ON JUNE 21, '18, I SIMPLY  
11 SAVED ALL FILES IN GOOGLE DRIVE AND HARD PORTABLE DRIVE,  
12 HARD DRIVE. IT WAS MY MISTAKE, NO CRIMINAL INTENT.

13 AS DR. BARRY NAUGHTON, HE'S THE GOVERNMENT  
14 EXPERT ON CHINA, TESTIFIED, BOTH THOUSAND TALENT PROGRAM  
15 AND YISHI-YIYI PROGRAM ARE LEGITIMATE AWARDS SIMILAR TO  
16 ANY OTHER AWARD SPONSORED BY U.S. GOVERNMENT TO  
17 INTERNATIONAL RECIPIENTS. I WAS INTERESTED IN APPLYING  
18 THE AWARDS BECAUSE IT WOULD GIVE ME RECOGNITION AS A  
19 SUCCESSFUL SCIENTIST AND MORE CHANCES TO SEE MY MOTHER IN  
20 HOSPITAL AND FAMILY MEMBERS.

21 THE APPLICATIONS SHOWED BY GOVERNMENT WERE  
22 DRAFTS WRITTEN BY MR. LIU. IT WAS NOT THE OFFICIAL  
23 DOCUMENTS. NO COMPANY SEAL, MY SIGNATURE WAS FORGED FROM  
24 THE COVER LETTER OF MY RESUME BY MR. LIU IN CHINA.  
25 GOVERNMENT HAS NO PROOF WHAT WAS SUBMITTED, PRESENTED FOR

1 TWO AWARDS.

2 I DID NOT WRITE ANY OF THE APPLICATION AND WAS  
3 NOT AWARE TO THIS DATE WHERE AND WHO THE APPLICATIONS WERE  
4 SUBMITTED TO, AND ALL I DID FOR, I PICKED THE TWO AWARD  
5 APPLICATIONS, I SUBMITTED RESUME AND THE PERSONAL DATA AND  
6 THE DIPLOMAS. I ATTENDED YISHI-YIYI PRESENTATION, BUT NOT  
7 PRESENTED. I ATTENDED THE TTP WITH -- I ATTENDED  
8 PRESENTATION AT TTP, PRESENTED MY RESUME AND ANSWERED THE  
9 QUESTIONS REGARDING BPA REGULATION. THE TOTAL TIME FOR MY  
10 PRESENTATION WAS 10 MINUTES.

11 IN ADDITION, OTHER FILES RELATED WITH AWARD  
12 APPLICATIONS, POTENTIAL BUSINESS PLAN FOUND IN MY HARD  
13 DRIVE WERE DRAFTS SENT BY MR. LIU, REJECTED AND  
14 DISAPPROVED BY ME. GOVERNMENT HAS NO PROOF IF OR WHERE,  
15 WHO THESE FILES WERE SUBMITTED. IT IS, IS JUST --

16 COURT REPORTER: COULD YOU REPEAT THAT PART  
17 JUST A MINUTE.

18 THE COURT: YOU'RE GOING TO NEED TO REPEAT THAT  
19 FOR ME AS WELL, BUT ARE YOU SUGGESTING THAT THOSE --

20 THE DEFENDANT: LET ME FINISH THOUGH.

21 THE COURT: THE COURT REPORTER DIDN'T  
22 UNDERSTAND WHAT YOU SAID, SO I'M GOING TO ASK YOU TO  
23 REPEAT SOME OF THAT.

24 THE DEFENDANT: OKAY. IN ADDITION, OTHER FILES  
25 RELATED WITH AWARD APPLICATIONS, POTENTIAL BUSINESS,

1 PROJECT PLAN LIKE THEY PRESENTED A NUMBER OF THINGS IN THE  
2 TRIAL, NONE OF THEM I WROTE THEM, AND MR. LIU SENT SOME-  
3 TIMES, SENT THESE FILES TO ME, ASK FOR MY OPINION FROM  
4 TIME TO TIME. I TOLD HIM I DISAPPROVE. AND THEN HE SAID,  
5 OH, OKAY, SO I NEVER HEARD HIM. SO TO THIS DAY I DO NOT  
6 KNOW WHAT HAS BEEN SUBMITTED AND TO WHO, AND I DO NOT KNOW  
7 ANYTHING.

8 AND IN ADDITION, ALL THE FILES RELATED WITH  
9 AWARD APPLICATIONS, POTENTIAL BUSINESS PLAN AND PROJECT  
10 PLAN FOUND IN MY HARD DRIVE WERE DROPPED, SENT BY MR. LIU,  
11 REJECTED, DISAPPROVED BY ME. GOVERNMENT HAS NO PROOF IF  
12 OR WHERE, WHO THESE FILES WERE SUBMITTED.

13 IS THIS WHAT YOU WANTED ME TO REPEAT?

14 THE COURT: I BELIEVE SO, YES.

15 THE DEFENDANT: OKAY. ALL RIGHT.

16 I WAS NOT AWARE THE CHINESE ARTICLES ABOUT ME  
17 UNTIL MY LAWYER SHOWED ME IN FBI'S DISCOVERY MATERIALS.

18 MR. LIU ADMITTED HE MADE FALSE STATEMENT FOR MY  
19 AWARD APPLICATIONS WITHOUT MY KNOWLEDGE. THAT WAS  
20 DOCUMENTED IN THE WECHAT, HE ADMITTED THAT. MR. LIU USED  
21 MY NAME TO GET MY -- TO GET CHINESE GOVERNMENT FOR GRANT.  
22 I HAVE NO CONTROL WHAT HE DID IN CHINA. I AM A VICTIM.  
23 PLEASE UNDERSTAND I AM A VICTIM. I HAVE NO CONTROL WHAT  
24 HE DID IN CHINA. MS. FAN AND MR. LIU NEVER KNEW I  
25 ACTUALLY LEFT COKE ON AUGUST 31, 2017 AND WORKED FOR



1 EASTMAN AFTER I LEFT COKE. THEY NEVER KNEW I HAD THESE  
2 FILES.

3 IN CLOSING, I DID NOT STEAL ANYTHING AND ALL  
4 THE FILES I POSSESSED WERE RECEIVED WITH FULL AUTHORIZA-  
5 TION DURING MY EMPLOYMENT. I WAS SIMPLY DOING MY JOB PER  
6 MANAGEMENT'S REQUEST. IT WAS MY MISTAKE TO KEEP THESE  
7 COMPANY FILES AFTER THE EMPLOYMENT ENDED, BUT AN INNOCENT  
8 MISTAKE SHOULD NOT BE PUNISHED AS A CRIME. I HAVE NO  
9 INTENT TO DISCLOSE WITH ANYONE, NEVER SHARED WITH ANYONE,  
10 AND I HAVE NO INTENT TO HARM ANY OF THE COMPANIES I WORKED  
11 SO HARD TO HELP.

12 BEFORE MY EMPLOYMENT WITH COKE AND EASTMAN, I  
13 HAD WORKED FOR SOME LEADING INDUSTRIAL COMPANIES, SUCH AS  
14 ESSILOR, DUPONT, DSM, SAINT-GOBAIN AND HONEYWELL FOR  
15 DECADES. NONE OF THESE COMPANIES HAVE EVER ACCUSED ME OF  
16 LEAKING OR KEEPING CONFIDENTIAL INFORMATIONS AFTER NEARLY  
17 30 YEARS. I WAS WELL RECOGNIZED AS AN ACCOMPLISHED  
18 SCIENTIST THAT HAD TRACK-RECORD SUCCESS TO DELIVER BUSI-  
19 NESS, CUSTOMER'S NEEDS WITH EXTRAORDINARY QUALIFICATIONS,  
20 CHARACTER AND INTEGRITY.

21 I AM A CARING MOTHER, WIFE, DAUGHTER, AN  
22 ACCOMPLISHED SCIENTIST, AND A PROUD U.S. CITIZEN. THE  
23 TERM "ILLEGAL ACTIVITIES" WERE NOT IN THE VOCABULARY  
24 ASSOCIATED WITH ME FOR MY ENTIRE LIFE.

25 YOUR HONOR, I HAVE BEEN INCARCERATED FOR MORE

1 THAN THREE YEARS FOR MY MISTAKES. MY MOTHER PASSED AWAY  
2 IN THIS JANUARY. I FEEL SO GUILTY THAT I CANNOT BE THERE  
3 FOR HER FUNERAL. I'VE BEEN CRYING AND PRAYING FOR GOD'S  
4 HELP DAILY, TRUSTING THAT GOD HEARS MY SIGHS, FEELS MY  
5 HURTS AND SEES MY FEARS. LET ME QUOTE FROM BIBLE, "CAST  
6 YOUR BURDEN ON THE LORD, AND HE WILL SUSTAIN YOU, HE WILL  
7 NEVER PERMIT THE RIGHTEOUS TO BE MOVED." "MAY MERCY,  
8 PEACE AND LOVE BE MULTIPLIED TO YOU." IN GOD'S GRACE, WE  
9 FIND OUR COURAGE. IN GOD'S LOVE, WE FIND OUR STRENGTH. I  
10 LOVE AMERICA, REMAIN OPTIMISTIC AND POSITIVE THAT UNITED  
11 STATES IS A COUNTRY WHERE TRUTH AND FAIRNESS WILL PREVAIL.

12 THANK YOU FOR YOUR TIME AND CONSIDERATION. GOD  
13 BLESS ALL AMERICANS. RESPECTFULLY.

14 AND THAT'S ALL I WANT TO SAY; BUT TO ANSWER  
15 YOUR EARLIER QUESTION TO MY LAWYER, YOU SAID, WHAT IS THE  
16 PROOF I DID WRITE THIS. I HAVE NEVER, I SIMPLY DID NOT  
17 COMPLETE THIS AND WILL HAVE RECORD IN EITHER MY E-MAIL,  
18 EVERYTHING, THERE IS NO RECORD I EVER DONE THAT. AND  
19 ALSO, IN THE RESEARCH I DONE, THE RECORD, MR. LIU SAID HE  
20 COMPLETED MY APPLICATION; BUT WHAT THE REASON I NEVER  
21 KNOW, TO THIS DATE I NEVER KNOW.

22 THE COURT: MAY I ASK YOU ONE OR TWO QUESTIONS?

23 THE DEFENDANT: SURE.

24 THE COURT: IS THERE SOME E-MAIL OR TEXT OR  
25 SOMETHING SIMILAR TO THAT THAT YOU CAN POINT TO WHERE YOU

1 REJECTED OR TOLD MR. LIU THAT YOU DID NOT APPROVE OF THESE  
2 BUSINESS PLANS, THESE PROJECT PLANS, THOSE SORTS OF  
3 THINGS?

4 THE DEFENDANT: WELL, USUALLY, USUALLY E-MAIL,  
5 BUT I HAVE NO ACCESS TO MY E-MAIL, AND POSSIBLY I HAVE  
6 YEARS, AND I DO NOT NOW HAVE THE RECORD AND -- BUT THEY  
7 ARE, THEY ARE, THEY ARE SAYING THAT THERE ARE WECHAT  
8 MESSAGES FROM MR. LIU AND THAT HE COMPLETED MY, HE  
9 COMPLETED MY APPLICATION, BUT HE NEVER TOLD ME WHAT WAS  
10 SUBMITTED TO WHO. TO THIS DAY I DO NOT KNOW.

11 ALL -- THE SIGNATURE, THE GOVERNMENT SHOW IN  
12 THAT ONE BECAUSE I SEND MY RESUME, I HAVE A COVER LETTER,  
13 THERE'S AN ELECTRONIC SIGNATURE THERE. THEY JUST SIMPLY  
14 COPIED THAT PARTICULAR THINGS, AND THEN HE SENT, HE SENT  
15 TO ME; AND I SAID, WELL, I, I AGREE ABOUT MY RESUME PART,  
16 I DO NOT AGREE WITH ANYTHING ELSE. HE SAID HE WOULD TAKE  
17 CARE OF THAT, THAT'S ALL HE SAID. HE SENT THINGS FROM  
18 TIME TO TIME TO ME, AND THEN I WOULD SAY, OKAY, AND I DO  
19 NOT AGREE; AND THEN HE SAID, WELL, HE NEVER HEARD OF IT;  
20 AND THEN HE WOULD SAY, WELL, THEY DON'T NEED THAT. EXCEPT  
21 FOR EXAMPLE LIKE THE PATENT, THE FACE, THE FALSE PATENT,  
22 THINGS THAT THE GOVERNMENT SHOWED IN THE TRIAL, AND THAT  
23 THAT'S -- THEY DID THAT SENT TO ME, I COMPLETED THE  
24 RESUME, AND THEN THEY SAID, OH, NEVER MIND. SO I NEVER  
25 KNOW, AND IF THAT'S SOMETHING THEY DID, OR THEY DID NOT,

1 TO THIS DAY I DO NOT KNOW.

2 THE COURT: ALL RIGHT.

3 THE DEFENDANT: BECAUSE I DON'T, I DON'T STAY  
4 THERE. THERE 12 HOUR DIFFERENCE, YOU UNDERSTAND, AND SO I  
5 DON'T -- I DO NOT -- IT'S IMPOSSIBLE FOR ME TO KNOW WHAT  
6 HIS DAILY ACTIVITIES, AND HE DOESN'T REPORT TO ME, AND SO  
7 BASICALLY JUST I -- ALL, ALL MY PARTICIPATION IS ANSWER  
8 THE -- SEND MY PERSONAL INFORMATION AND ANSWER QUESTION  
9 WITH PUBLIC INFORMATION; THAT'S ALL, THAT'S ALL I DID.

10 THE COURT: ALL RIGHT. AND I WANT TO MAKE SURE  
11 YOU UNDERSTAND THIS QUESTION, SO IF YOU --

12 THE DEFENDANT: YES.

13 THE COURT: -- HAVE ANY DOUBT ABOUT WHAT I'M  
14 ASKING YOU, ASK ME TO EXPLAIN.

15 THE DEFENDANT: YEAH, BUT --

16 THE COURT: GO AHEAD, GO AHEAD IF YOU WANT  
17 TO.

18 THE DEFENDANT: YEAH; BUT THERE, YEAH, MR. LIU  
19 IN WECHAT SAID, HE ANSWERED, HE DID ALL THAT APPLICATION  
20 FOR ME.

21 THE COURT: ALL RIGHT. HERE'S THE QUESTION, IF  
22 ALL YOU DID WAS MISTAKENLY RETAIN FILES THAT HAD BEEN  
23 GIVEN TO YOU, WHY DID YOU GO INTO THOSE FILES AND CHANGE  
24 THE FILE NAMES --

25 THE DEFENDANT: I DID NOT.

1 THE COURT: -- AND REMOVE THE NAMES OF THE  
2 COMPANIES THEY BELONG TO?

3 THE DEFENDANT: I DID NOT.

4 THE COURT: DO YOU KNOW WHO DID?

5 THE DEFENDANT: I DON'T. I DID NOT -- WHEN I,  
6 WHEN I GOT -- I DID NOT EVEN BOTHER TO LOOK AFTER I  
7 DOWNLOAD THEM, THAT -- ALL THESE FILES WERE IN MY HOME. I  
8 HAD NEVER -- EVER SINCE, I DON'T HAVE RECORD OF WHAT BEEN  
9 GIVE BACK TO ME, AND I HAVE NEVER LOOK AT AFTERWARDS.

10 THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE  
11 YOU WANT TO SAY?

12 THE DEFENDANT: HUH?

13 THE COURT: IS THERE ANYTHING ELSE YOU WANT TO  
14 SAY?

15 THE DEFENDANT: NOT AT THIS MOMENT.

16 THE COURT: LET'S TAKE A FIVE MINUTE RECESS,  
17 AND I'LL COME BACK AND IMPOSE SENTENCE.

18 (RECESSED AT 10:32 A.M., UNTIL 10:57 A.M.)

19 THE COURT: I APOLOGIZE FOR THAT SHORT DELAY,  
20 BUT I THINK WE'RE READY TO PROCEED.

21 DR. YOU, COME BACK UP TO THE PODIUM, PLEASE,  
22 WITH YOUR ATTORNEYS.

23 DR. YOU, IF YOU READ TITLE 18, UNITED STATES  
24 CODE, SECTION 3553(A), MY RESPONSIBILITY HERE TODAY SOUNDS  
25 TO -- SOUNDS PRETTY SIMPLE. THAT STATUTE DIRECTS ME TO

1 IMPOSE A SENTENCE WHICH IS SUFFICIENT BUT NOT GREATER THAN  
2 NECESSARY TO COMPLY WITH THE PURPOSES OF SENTENCING  
3 ESTABLISHED BY THE CONGRESS. THE FACT THAT CONGRESS  
4 PHRASED IT THAT WAY, A SENTENCE SUFFICIENT BUT NOT GREATER  
5 THAN NECESSARY, MEANS TO ME THAT CONGRESS DREW A LINE, AND  
6 ON ONE SIDE OF THAT LINE IS A SENTENCE SUFFICIENT, ON THE  
7 OTHER SIDE OF THAT LINE IS A SENTENCE GREATER THAN  
8 NECESSARY; AND JUST AS A MATTER, A GENERAL MATTER  
9 INVOLVING SENTENCING, SINCE I BEGAN MY GOAL HAS ALWAYS  
10 BEEN TO BE, NEVER BE ON THE GREATER-THAN-NECESSARY SIDE OF  
11 THAT LINE. BUT DESPITE THE FACT THAT THE CONGRESS DREW A  
12 RED LINE BETWEEN A SENTENCE SUFFICIENT AND ONE GREATER  
13 THAN NECESSARY, AS A PRACTICAL MATTER IT'S VERY DIFFICULT  
14 SOMETIMES TO DETERMINE WHERE THAT LINE SHOULD BE DRAWN IN  
15 TERMS OF THE APPROPRIATE SENTENCE IN A CASE.

16 NOW, CONGRESS DIDN'T LEAVE ME WITHOUT ANY  
17 GUIDANCE ON HOW TO DO THAT, CONGRESS LISTED A NUMBER OF  
18 FACTORS IN THAT CODE SECTION THAT I AM REQUIRED TO  
19 CONSIDER BEFORE ARRIVING AT A DETERMINATION OF WHAT  
20 SENTENCE IS SUFFICIENT BUT NOT GREATER THAN NECESSARY IN  
21 THIS PARTICULAR CASE, AND YOU ARE ENTITLED TO AN  
22 INDIVIDUALIZED DETERMINATION OF THE APPROPRIATE SENTENCE  
23 IN THIS CASE, SO I'M GOING TO TAKE A FEW MINUTES TO TALK  
24 ABOUT THOSE FACTORS SO THAT THE RECORD IS CLEAR AND SO  
25 THAT YOU UNDERSTAND THE REASON FOR MY ULTIMATE DECISION

1       HERE TODAY.

2                   I OFTEN TELL DEFENDANTS THAT IMPOSING SENTENCE  
3       IN A CRIMINAL CASE IS THE MOST UNPLEASANT THING I HAVE TO  
4       DO, AND IT IS, BY FAR. MY PREDECESSOR ON THE BENCH TOLD  
5       ME ONE TIME WHEN I STARTED THAT IT WOULD GET EASIER WITH  
6       TIME, THAT I WOULDN'T HAVE TO SPEND SO MUCH TIME AND  
7       STRUGGLE WITH SENTENCES, IT WOULD SIMPLY GET EASIER. HE  
8       WAS WRONG ABOUT THAT, IT'S NEVER GOTTEN ANY EASIER, AND  
9       YOUR CASE IN PARTICULAR HAS BEEN A DIFFICULT ONE FOR ME.  
10      IT'S ONE I'VE LOST SLEEP OVER; BUT I'M GOING TO DO THE  
11      VERY BEST I CAN BASED ON WHAT CONGRESS TOLD ME TO DO TO  
12      IMPOSE A SENTENCE THAT IS SUFFICIENT HERE, BUT NOT ONE DAY  
13      GREATER THAN NECESSARY, AND SO LET ME TALK A LITTLE BIT  
14      ABOUT THOSE 3553(A) FACTORS.

15                   THE BEGINNING POINT, INDEED THE ONE THAT THE  
16      SIXTH CIRCUIT AND OTHER CIRCUITS HAVE TOLD ME TO START  
17      WITH, IS THE ADVISORY GUIDELINE RANGE WHICH APPLIES TO THE  
18      CASE. HERE THAT HAS BEEN DETERMINED TO BE A RANGE OF 324  
19      MONTHS TO 405 MONTHS, WHAT IN MY VIEW IS ESSENTIALLY A  
20      LIFE SENTENCE FOR A DEFENDANT ALMOST 60 YEARS OF AGE.  
21      THAT IS A VERY SIGNIFICANT SENTENCE IN A CRIMINAL CASE  
22      BECAUSE, AS I'M SURE YOUR LAWYERS HAVE EXPLAINED TO YOU,  
23      SENTENCES IN FEDERAL COURT ARE NONPAROLABLE; UNLIKE STATE  
24      COURT WHERE DEFENDANTS ARE ELIGIBLE FOR PAROLE AFTER  
25      SERVING A PORTION OF THE SENTENCE, THAT'S NOT TRUE IN THE

1 FEDERAL COURTS.

2 NOW, THE GOVERNMENT DOES NOT ADVOCATE HERE FOR  
3 A SENTENCE WITHIN THAT ADVISORY, WITHIN THAT ADVISORY  
4 RANGE, AND THESE GUIDELINES ARE TRULY ADVISORY, WHICH  
5 MEANS I'M NOT REQUIRED TO SENTENCE YOU WITHIN THAT GUIDE-  
6 LINE RANGE. THE UNITED STATES ASKS ME TO VARY DOWNWARD TO  
7 240 MONTHS, A 122 MONTH DOWNWARD VARIANCE FROM THE BOTTOM  
8 OF THAT GUIDELINE RANGE. MR. SHIPLEY, OF COURSE, ASKS ME  
9 TO VARY EVEN FURTHER, DOWN TO A SENTENCE OF TIME SERVED IN  
10 THE CASE; BUT THAT GUIDELINE RANGE IS IMPORTANT, AND IT'S  
11 THE GENERAL STARTING POINT FOR A DISCUSSION OF AN APPRO-  
12 PRIATE SENTENCE FOR A VERY SIMPLE REASON, THE UNITED  
13 STATES SENTENCING COMMISSION WAS FORMED BY THE SENTENCING  
14 REFORM ACT OF 1984. IT WAS GIVEN THE RESPONSIBILITY OF  
15 ESTABLISHING THESE GUIDELINES FOR USE BY DISTRICT JUDGES  
16 IN SENTENCING IN CRIMINAL CASES. ITS PRIMARY GOAL WAS TO  
17 ESTABLISH A SENTENCE OF UNIFORM SENTENCING. IN OTHER  
18 WORDS, CONGRESS BELIEVED THAT ALL DEFENDANTS, NO MATTER  
19 WHAT THEIR RACE OR GENDER OR ECONOMIC BACKGROUND OR  
20 STANDING IN SOCIETY OR ANY OF THE OTHER THINGS THAT WE USE  
21 TO DIVIDE PEOPLE IN OUR SOCIETY TODAY WOULD BE BASICALLY  
22 IRRELEVANT, IT SHOULDN'T MATTER, THAT PEOPLE OUGHT TO BE  
23 TREATED THE SAME, REGARDLESS OF THEIR WEALTH OR STANDING  
24 OR EDUCATION OR RACE OR GENDER, AND THAT, I THINK, MOST  
25 PEOPLE WOULD AGREE IS A PROPER GOAL OF SENTENCING; BUT THE



1 GUIDELINE RANGE COMES TO THIS COURT NOW UNDER AN ADVISORY  
2 GUIDELINE RANGE SYSTEM AS BASICALLY A RECOMMENDATION FROM  
3 THE UNITED STATES SENTENCING COMMISSION AS TO WHAT THE  
4 SENTENCE OUGHT TO BE IN A CASE WHERE A DEFENDANT HAS A  
5 TOTAL OFFENSE LEVEL OF 41 AND A CRIMINAL HISTORY CATEGORY  
6 OF I. BUT WHEN THE SENTENCING COMMISSION WAS CREATED,  
7 CONGRESS GAVE THE COMMISSION A MANDATE, A MANDATE TO  
8 ESTABLISH THESE RANGES, BUT TO DO SO ONLY AFTER CONSIDER-  
9 ING ALL THE 3553(A) FACTORS LISTED IN THAT CODE SECTION,  
10 AND JUST ABOUT EVERYTHING IN MY EXPERIENCE SUGGESTS TO ME  
11 THAT THE SENTENCING COMMISSION HAS DONE EXACTLY THAT OVER  
12 THE LAST 30 YEARS.

13 HAVING SAID THAT TO YOU, THE GUIDELINE RANGE IS  
14 STILL ADVISORY, WHICH MEANS I'M NOT REQUIRED TO SENTENCE  
15 WITHIN THAT RANGE. BECAUSE IT'S ADVISORY THOUGH, I GO ON  
16 TO LOOK AT THE OTHER 3553(A) FACTORS, ONE OF WHICH IS THE  
17 ONE I JUST MENTIONED. GUIDELINE RANGE SENTENCES PROMOTE  
18 UNIFORMITY IN SENTENCING, THAT'S 3553(A) (6). CONGRESS  
19 PHRASED IT A LITTLE BIT DIFFERENTLY, CONGRESS DIRECTED ME  
20 TO TRY TO AVOID UNWARRANTED SENTENCE DISPARITIES AMONG  
21 DEFENDANTS WHO HAVE BEEN CONVICTED OF SIMILAR CONDUCT AND  
22 WHO HAVE A SIMILAR CRIMINAL HISTORY.

23 AS I SAID, I THINK THAT IS A FAIR AND APPRO-  
24 PRIATE GOAL OF SENTENCING, AND THE SIXTH CIRCUIT AND OTHER  
25 CIRCUITS, AS THE GOVERNMENT ARGUES HERE, HAVE INDICATED

1 THAT SENTENCING A DEFENDANT WITHIN A PROPERLY CALCULATED  
2 ADVISORY GUIDELINE RANGE DOES IN FACT PROMOTE UNIFORMITY  
3 IN SENTENCING, THAT'S BECAUSE OF ALL THE WORK THE SENTENC-  
4 ING COMMISSION HAS DONE OVER THE LAST 30 PLUS YEARS WITH  
5 RESPECT TO THE 3553(A) FACTORS. THEY HAVE SIMPLY GATHERED  
6 REAMS AND REAMS AND REAMS OF STATISTICAL DATA AND DOCU-  
7 MENTS. THEY HAVE HEARD FROM EXPERTS, THEY HAVE EXAMINED  
8 BOTH STATE AND FEDERAL SENTENCING RECORDS, AND I THINK THE  
9 SENTENCING COMMISSION HAS DONE A GOOD FAITH EFFORT AT  
10 DOING WHAT CONGRESS TOLD THEM TO DO. SO THE GUIDELINE  
11 RANGE IS IMPORTANT, IT HAS LESS IMPORTANCE IN THIS CASE  
12 SIMPLY BECAUSE THE GOVERNMENT ASKS ME TO IMPOSE A SENTENCE  
13 BELOW THAT ADVISORY GUIDELINE RANGE, BUT THAT IS THE  
14 STARTING POINT.

15 BEYOND THAT THOUGH, THERE ARE SOME FACTORS IN  
16 THIS CASE, AND SOMETIMES IN OTHERS, THAT ARE VERY IMPOR-  
17 TANT. I BEGIN GENERALLY BY LOOKING TO THE SERIOUSNESS OF  
18 THE OFFENSE. DESPITE WHAT YOU HAVE SAID THIS MORNING,  
19 DR. YOU, THE PROOF IN THIS CASE ESTABLISHED AND THE JURY  
20 FOUND THAT YOU HAD IN YOUR POSSESSION STOLEN TRADE  
21 SECRETS, AND I WOULD GO FURTHER AND SAY THAT THE PROOF IN  
22 THE CASE ESTABLISHED THAT YOU STOLE THEM, AND THAT YOU  
23 INTENDED TO PROVIDE THOSE TO A FOREIGN GOVERNMENT.

24 I THINK IT IS WELL KNOWN, AND IT WAS ESTAB-  
25 LISHED ALSO BY THE TRIAL TESTIMONY IN THE CASE, THAT THE

1 CHINESE COMMUNISTS HAVE ENGAGED OVER THE LAST SEVERAL  
2 YEARS IN A SUSTAINED, INTENTIONAL EFFORT TO STEAL TRADE  
3 SECRETS FROM AMERICA. I DESCRIBED THE PEOPLE'S REPUBLIC  
4 OF CHINA EARLIER AS THE ENEMY, THE ECONOMIC ENEMY OF THE  
5 UNITED STATES. IT IS. IT IS THE NUMBER ONE THREAT IN THE  
6 WORLD TODAY TO THE ECONOMIC WELL-BEING OF THE UNITED  
7 STATES. IT ALSO CAN BE CATEGORIZED AS A POLITICAL,  
8 POTENTIAL MILITARY ENEMY OF THE UNITED STATES AS WELL;  
9 AND SO THE PROOF ESTABLISHED, AND I DON'T THINK THIS IS  
10 TOO HARSH A THING TO SAY, THAT IT WAS YOUR INTENT BECAUSE  
11 YOU POSSESSED THESE TRADE SECRETS TO PROVIDE THEM TO A  
12 FOREIGN ENTITY THAT IS AT ECONOMIC WAR WITH THE UNITED  
13 STATES. I AGREE WITH THE GOVERNMENT THAT THAT REPRESENTS  
14 A BETRAYAL NOT ONLY OF YOUR EMPLOYER, BUT A BETRAYAL OF  
15 THE UNITED STATES.

16 YOU KNOW, I TOLD YOU JUST A FEW MINUTES AGO  
17 THAT ONE OF THE MOST UNPLEASANT THINGS I DO, IN FACT THE  
18 MOST UNPLEASANT THING I DO AS A JUDGE IS IMPOSE SENTENCE  
19 IN A CRIMINAL CASE. THE THING I LIKE MOST ABOUT MY JOB  
20 AND THE THING I TAKE THE GREATEST PLEASURE FROM, ON THE  
21 OTHER HAND, ARE NATURALIZATION CEREMONIES.

22 I REACHED OVER A FEW MINUTES AGO WHEN YOU WERE  
23 MAKING REFERENCE TO YOUR OWN NATURALIZATION AND GOT THE  
24 OATH THAT I ADMINISTER WHEN NON-CITIZENS TAKE THE OATH OF  
25 CITIZENSHIP. THE VERY FIRST LINE OF THAT OATH REQUIRES

1 THE DECLARANT TO DECLARE UNDER OATH THAT HE OR SHE  
2 ABSOLUTELY AND ENTIRELY RENOUNCES ALL ALLEGIANCE AND  
3 FIDELITY TO ANY FOREIGN PRINCE, POTENTATE, STATE OR  
4 SOVEREIGNTY. THAT MEANS WHEN YOU TOOK THE OATH OF CITI-  
5 ZENSHIP, YOU COMPLETELY RENOUNCED ANY LOYALTY, ANY  
6 FIDELITY, ANY ALLEGIANCE TO THE COUNTRY OF YOUR BIRTH, AND  
7 YOU CHOSE TO TRANSFER THAT ABSOLUTE ALLEGIANCE AND LOYALTY  
8 TO THE UNITED STATES OF AMERICA.

9 ONE OF THE REASONS I ENJOY THOSE NATURALIZATION  
10 CEREMONIES IS BECAUSE I ENJOY SEEING THE EXCITEMENT ON THE  
11 FACES OF THOSE NEW CITIZENS, I ENJOY HEARING THEIR STORIES  
12 ABOUT WHY THEY HAVE CHOSEN TO BECOME CITIZENS OF THE  
13 UNITED STATES; AND AT NATURALIZATION CEREMONIES I  
14 TYPICALLY GO AROUND THE ROOM AND ASK EACH ONE OF THE NEW  
15 CITIZENS IF THERE'S ANYTHING THEY'D LIKE TO SAY TO THE  
16 COURT ABOUT WHY THEY WANT TO BECOME CITIZENS OR WHY THEY  
17 HAVE WORKED HARD TO BECOME CITIZENS, AND THOSE STORIES ARE  
18 INSPIRING TO ME. THEY MAKE ME PROUD. AND EVERY NOW AND  
19 THEN I WILL BE AT SOME EVENT WHEN SOMEBODY WILL WALK UP TO  
20 ME AND ASK IF I REMEMBER THEM, I HATE TO SAY THAT I OFTEN  
21 DON'T, BUT THEY HAVE A PICTURE THAT WAS TAKEN WITH ME AT A  
22 NATURALIZATION CEREMONY, AND THEY WANT TO TALK TO ME ABOUT  
23 THAT CEREMONY AND ABOUT HOW INSPIRING IT WAS AND ABOUT HOW  
24 WELL THEY HAVE DONE SINCE THEY BECAME A CITIZEN. THEY ALL  
25 COME HERE FOR THE SAME REASON, I KNOW THERE ARE VARIATIONS

1 OF IT, SOME ARE ESCAPING POOR CONDITIONS WHERE THEY LIVED  
2 BEFORE, BUT THEY ALL COME HERE BECAUSE OF THE PROMISE OF  
3 THE AMERICAN DREAM. THAT'S WHAT MOTIVATED YOU, ACCORDING  
4 TO YOUR STATEMENT THIS MORNING, AND YOU IN LARGE PART HAVE  
5 REALIZED THE AMERICAN DREAM. YOU RECEIVED A GOOD  
6 EDUCATION, YOU HAD THE OPPORTUNITY TO WORK AT GOOD JOBS,  
7 YOU HAVE MADE A GOOD LIVING FROM THOSE JOBS DOWN THROUGH  
8 THE YEARS, AND THAT STORY IN AND OF ITSELF INSPIRES ME,  
9 AND IT MAKES ME PROUD OF THE FACT THAT THAT'S WHAT LEGAL  
10 CITIZENSHIP FOR NON-CITIZENS IS SUPPOSED TO PRODUCE.

11 THIS CASE AT ITS BASIC IS A CASE ABOUT A PERSON  
12 WHO CHOSE TO BECOME A CITIZEN OF THE UNITED STATES, BUT  
13 WHO THEN TOOK ACTIONS FOR REASONS THAT I'M NOT CLEAR OF,  
14 EXCEPT FOR THE POSSIBILITY OF GREED, TO DO HARM TO  
15 AMERICAN COMPANIES AND TO THE COUNTRY ITSELF. SETTING  
16 ASIDE ALL THE DISCUSSION ABOUT THE POTENTIAL LOSS OR THE  
17 INTENDED LOSS, THAT'S WHAT THIS CASE BOILS DOWN TO, AND  
18 THAT IS VERY TROUBLING TO ME. THAT INDICATES TO ME THAT  
19 THIS IS A VERY SERIOUS OFFENSE.

20 NOW, I'LL ACKNOWLEDGE, AND I SHOULD HAVE TALKED  
21 ABOUT THIS WHEN I TALKED ABOUT THE WEIGHT TO BE GIVEN TO  
22 THE ADVISORY GUIDELINES RANGE, THAT I AM TROUBLED A BIT BY  
23 THE CONSTRUCTION OF THE GUIDELINE THAT LEADS TO THIS  
24 GUIDELINE RANGE SENTENCE. I'M TROUBLED, FIRST OF ALL,  
25 ABOUT THE WAY LOSS IS TREATED UNDER THE GUIDELINES. THE

1 CATEGORIES THAT RESULT IN THE INCREASE IN THE OFFENSE  
2 LEVEL DEPENDING UPON THE AMOUNT ARE SOMEWHAT ARBITRARY,  
3 AND THEY RANGE FROM A DIFFERENCE OF \$6,500 ALL THE WAY UP  
4 TO \$300 MILLION IN, IN ESTABLISHING HOW LEVELS ARE ADDED  
5 WITH RESPECT TO THE GUIDELINES.

6 FOR INSTANCE, UNDER THE GUIDELINES A LOSS OF  
7 \$6,500 OR LESS RESULTS IN NO INCREASE IN THE OFFENSE  
8 LEVEL. IF IT'S MORE THAN \$6,500, BUT LESS THAN 15,000,  
9 TWO LEVELS ARE ADDED; BUT WHEN YOU GET UP INTO THE UPPER  
10 PART OF THE GUIDELINE RANGE, IF THE LOSS IS MORE THAN 250  
11 MILLION BUT LESS THAN 550 MILLION, THERE'S A TWO LEVEL  
12 INCREASE. I'M NOT SURE I CAN SAY ANYTHING ABOUT THOSE  
13 BREAKS EXCEPT THAT THEY ARE SOMEWHAT ARBITRARY. AND IN A  
14 CASE LIKE THIS, WHERE WE ARE DEALING WITH INTENDED LOSS  
15 UNDER THE GUIDELINES RATHER THAN ACTUAL LOSS, I'M TROUBLED  
16 EVEN MORE, ALTHOUGH WE HAVE IN MY VIEW PROPERLY CALCULATED  
17 THE LOSS ACCORDING TO THE GUIDELINES, WHICH TELLS US TO  
18 MAKE ONLY A REASONABLE ESTIMATE OF THE LOSS. I'M TROUBLED  
19 BY ANYTHING THAT INCLUDES THE WORD "ESTIMATE". THAT BY  
20 DEFINITION MEANS THAT WE CANNOT BE CERTAIN. ESTIMATE  
21 BASICALLY MEANS A GUESS, ALTHOUGH THERE'S A LITTLE MORE TO  
22 IT THAN THAT HERE BECAUSE IT HAS TO BE REASONABLE, THERE  
23 HAVE TO BE SOME FACTORS THAT JUSTIFY IT; BUT AT THE END OF  
24 THE DAY IT DRIVES THE LOSS ESTIMATION IN THE CASE, IT IS  
25 AN ESTIMATE, ALBEIT A REASONABLE ONE.

1           FOR ALL THESE YEARS THAT GUIDELINE HAS BEEN  
2   ROUGHLY THE SAME, AND I'VE ALWAYS BEEN TROUBLED ABOUT THE  
3   WAY THAT GUIDELINE IS CONSTRUCTED BECAUSE OF THE VERY  
4   SIGNIFICANT IMPACT IT HAS ON A DEFENDANT'S OFFENSE LEVEL  
5   AS THE LOSS INCREASES.

6           NOW, I AGREE GENERALLY WITH WHAT THE GOVERNMENT  
7   ARGUES; THAT IS, THAT THE GREATER THE AMOUNT OF THE THEFT,  
8   THE GREATER THE SENTENCE OUGHT TO BE. I THINK MOST PEOPLE  
9   WOULD AGREE WITH THAT. AND IT MAY BE THAT THERE IS NO  
10  BETTER WAY FOR THE SENTENCING COMMISSION TO DO IT THAN  
11  WHAT I'VE JUST DESCRIBED, BUT IT'S TROUBLING TO ME BECAUSE  
12  IT IS AN ESTIMATE; AND SO THE GUIDELINE RANGE CLEARLY HAS  
13  LESS FORCE IN MY MIND ON THIS CASE BECAUSE ABOUT 60  
14  PERCENT OF THE OFFENSE LEVELS COME FROM THE LOSS ESTIMATE  
15  IN THE CASE, 24 LEVELS OF THE TOTAL OF 41 COME FROM THE  
16  REASONABLE ESTIMATE OF THE LOSS.

17          AND AS WE AT LEAST IMPLICITLY, AND I THINK  
18  SOMEWHAT EXPLICITLY ACKNOWLEDGED IN THE MEMORANDUM OPINION  
19  THAT WAS JUST FILED, THERE WERE A LOT OF PIECES THAT HAD  
20  TO COME TOGETHER BEFORE THIS SCHEME COULD BE COMPLETE; NOT  
21  JUST THE COOPERATION OF THE ITALIAN COMPANY, BUT A LOT OF  
22  OTHER THINGS AS WELL. AND WHETHER THE PROFITS STATED BY  
23  THAT APPLICATION HAD A REASONABLE BASIS TO THEM OR WHETHER  
24  THAT WAS JUST SOME NUMBER THAT WAS HOPED FOR IS HARD TO  
25  DETERMINE, BUT AT ITS BASIC THIS IS A VERY SERIOUS OFFENSE

1       IN MY OPINION.

2                   ONE OTHER THING ABOUT THE SERIOUSNESS OF THIS  
3       OFFENSE AND THE GUIDELINE RANGE, ABOUT 60 PERCENT OF MY  
4       DOCKET IS COMPOSED OF DRUG AND FIREARM CASES. FOR 19  
5       YEARS OF DOING THIS I HAVE SEEN THESE POOR, UNEDUCATED,  
6       DRUG ADDICTED DEALERS COME INTO THIS COURTROOM FACING WHAT  
7       I CONSIDER TO BE VERY HARSH MANDATORY MINIMUM SENTENCES  
8       AND VERY HARSH GUIDELINE CALCULATIONS; AND IN MANY CASES I  
9       WILL SENTENCE THEM WITHIN THOSE GUIDELINE RANGES BECAUSE  
10      OF THE HARM THAT THE DRUG TRAFFICKING THEY'RE ENGAGING IN  
11      HAS BROUGHT TO THIS PART OF THE COUNTRY AND INDEED THE  
12      WHOLE COUNTRY; AND I THINK ONE THING THAT JUDGES HAVE TO  
13      BE CAREFUL ABOUT IS NOT CREATING A DOUBLE STANDARD HERE,  
14      NOT TREATING THOSE POOR, UNEDUCATED, DRUG ADDICTED  
15      DEFENDANTS IN A WAY THAT IS MORE HARSH THAN WELL EDUCATED,  
16      WEALTHY, SOCIALLY CONNECTED DEFENDANTS ARE TREATED IN THE  
17      COURT.

18                   FAIRNESS IN SENTENCING IN MY VIEW MEANS JUST  
19      THAT, THERE SHOULD NOT BE A DOUBLE STANDARD. IN ALMOST  
20      EVERY WHITE COLLAR CASE THERE IS BEFORE THE COURT A  
21      DEFENDANT WHO LIKE YOU HAVE WORKED HARD, LARGELY BEEN A  
22      LAW ABIDING CITIZEN, WHO HAS REALIZED THE AMERICAN DREAM  
23      TO ONE EXTENT OR ANOTHER, WHO HAS DONE GOOD WORKS AND  
24      CHARITABLE DEEDS, THE COURT AND ALL COURTS INDEED HAVE TO  
25      BE CAREFUL THAT WE DON'T CREATE A DOUBLE STANDARD WHEN



1 VIEWING THOSE CASES.

2 I'M ALSO REQUIRED TO CONSIDER THE NEED TO  
3 PROMOTE RESPECT FOR THE LAW. DR. YOU, ON PAPER YOU ARE  
4 ONE OF THE MOST UNLIKELY PEOPLE TO COMMIT THIS OFFENSE.  
5 YOU WORKED HARD TO BECOME A CITIZEN, YOU WORKED HARD TO  
6 GET YOUR EDUCATION, YOU WORKED HARD TO EARN THE STANDARD  
7 OF LIVING THAT YOU HAD REALIZED, YOU HELD POSITIONS OF  
8 TRUST IN THESE COMPANIES. THEY HAD ENTRUSTED YOU WITH  
9 VERY IMPORTANT AND SECRET PROPRIETARY INFORMATION. AS I  
10 THINK ABOUT THE POSSIBLE REASONS WHY YOU DID WHAT YOU DID,  
11 THE ONLY ONE THAT MAKES ANY SENSE TO ME, FRANKLY, IS  
12 GREED; AND I'M AFRAID I REJECT HERE TODAY YOUR REPRESENTATION  
13 TO THE COURT THAT THIS WAS JUST A SIMPLE MISTAKE, A  
14 MISTAKE OF RETAINING SOMETHING THAT HAD BEEN LEGALLY  
15 ENTRUSTED TO YOU BY THESE COMPANIES. IT WAS NOT. THERE  
16 WAS AN INTENTIONAL EFFORT TO RETRIEVE AND RETAIN THESE  
17 FILES; AND ALTHOUGH YOU HAVE DENIED IT TODAY, SOMEBODY  
18 WENT INTO THOSE FILES AND REMOVED THE COMPANY NAMES AND  
19 RENAMED THE FILES. THE ONLY REASON I CAN THINK OF FOR  
20 THAT IS TO CONCEAL WHAT'S BEEN DONE, AND THERE IS NO  
21 PLAUSIBLE EXPLANATION OTHERWISE.

22 THERE WAS A SIGNIFICANT DEGREE OF DECEPTION ON  
23 YOUR PART TO TRY TO AVOID DETECTION, AND IT MAY SIMPLY BE  
24 A COINCIDENCE THAT AT THE SAME TIME YOU AND OTHERS ASSOCIATED  
25 WITH YOU WERE PURSUING AN EFFORT IN THE PEOPLE'S

1 REPUBLIC OF CHINA TO OBTAIN GOVERNMENT GRANTS TO START A  
2 COMPANY MANUFACTURING BPA-FREE COATINGS, I DON'T THINK IT  
3 WAS A COINCIDENCE.

4 WITH RESPECT TO THE FACTOR OF PROMOTING RESPECT  
5 FOR THE LAW, I THINK AT LEAST ON PAPER I WOULD AGREE WITH  
6 BOTH THE GOVERNMENT AND MR. SHIPLEY THAT YOU ARE UNLIKELY  
7 TO COMMIT OTHER CRIMES. I TEMPER THAT A BIT THOUGH BY  
8 WHAT APPEARS TO ME TO BE A COMPLETE LACK OF ACCEPTANCE OF  
9 RESPONSIBILITY AND ANY SHOWING OF REMORSE. TO CHARAC-  
10 TERIZE THIS AS A SIMPLE MISTAKE, TO ARGUE TO THIS COURT  
11 TODAY THAT YOU WERE IN COMPLETE IGNORANCE ABOUT WHAT OTHER  
12 PEOPLE WERE DOING DEFIES CREDIBILITY.

13 NOW, I REALIZE YOU DIDN'T TESTIFY AT TRIAL. I  
14 REALIZE YOU'VE TRIED TO TELL ME SOME THINGS TODAY THAT  
15 MAYBE YOU WOULD HAVE TESTIFIED TO AT TRIAL, BUT THE SIMPLE  
16 FACT OF THE MATTER IS THAT NONE OF THAT TESTIMONY WAS  
17 BEFORE THIS JURY; AND SO ABSENT LACK OF REMORSE, ABSENT  
18 ACCEPTANCE OF RESPONSIBILITY, IT'S DIFFICULT TO MAKE THE  
19 DETERMINATION THAT THE GOVERNMENT AND THE DEFENSE HAS MADE  
20 HERE ABOUT THE LACK OF -- THE POSSIBILITY OF RECIDIVISM,  
21 THAT'S THE POSSIBILITY OF REOFFENDING.

22 I WOULD ALSO NOTE ONE OTHER THING THAT GOES TO  
23 BOTH THE SERIOUSNESS OF THE OFFENSE AND THE NEED TO  
24 PROMOTE RESPECT FOR THE LAW, AND THAT IS THIS 800 POUND  
25 ELEPHANT IN THE ROOM THAT THERE WAS UNCONTRADICTED

1 TESTIMONY AT THE TRIAL OF THIS CASE THAT THESE TRADE  
2 SECRETS WERE DOWNLOADED TO A DEVICE THAT HAS NEVER BEEN  
3 RECOVERED BY THE AUTHORITIES. WHEN I READ THE VICTIM  
4 IMPACT STATEMENTS IN THIS CASE, AT LEAST ONE OF THOSE  
5 COMPANIES EXPRESSED CONCERN THAT YOU MIGHT BE RELEASED  
6 FROM PRISON SOON AND MIGHT TRANSFER THOSE SECRETS, IF  
7 THEY'RE STILL IN YOUR POSSESSION, TO SOMEONE ELSE OR TO  
8 SOME FOREIGN ENTITY.

9 I DON'T KNOW WHERE THE DEVICE IS. THE PRE-  
10 PONDERANCE OF THE EVIDENCE CERTAINLY SUGGESTS, IN FACT I'D  
11 SUGGEST THAT PROOF BEYOND A REASONABLE DOUBT ESTABLISHES  
12 THAT THERE IN FACT WAS ANOTHER DEVICE; BUT BEYOND THAT, WE  
13 HAVE TO SPECULATE TO KNOW WHERE IT IS, WHOSE POSSESSION  
14 IT'S IN OR WHAT THE INTENDED USE OF IT IS. IF THIS WAS A  
15 SIMPLE MISTAKE ON YOUR PART, I WOULD HAVE THOUGHT THAT  
16 BETWEEN THE TIME OF THAT JURY VERDICT AND NOW YOU WOULD  
17 HAVE MADE EVERY EFFORT TO EXPLAIN THAT PART OF THIS CASE.  
18 YOU HAVEN'T. THE DEVICE HASN'T BEEN PRODUCED. IT'S STILL  
19 OUT THERE.

20 I AM ALSO REQUIRED TO CONSIDER THE NEED TO  
21 PROVIDE JUST PUNISHMENT FOR THE OFFENSE. JUST PUNISHMENT  
22 IS SOMEWHAT OF A SUBJECTIVE TERM. PEOPLE COULD REASONABLY  
23 DISAGREE ON WHAT A TERM OF JUST PUNISHMENT MIGHT BE. A  
24 LOT OF SOCIAL SCIENTISTS WILL ARGUE THAT PUNISHMENT SHOULD  
25 NOT BE A GOAL OF SENTENCING, THAT REHABILITATION OUGHT TO

1 BE THE ONLY GOAL OF SENTENCING. I TEND TO DISAGREE WITH  
2 THAT BECAUSE I THINK ACTIONS HAVE CONSEQUENCES, AND THEY  
3 NEED TO HAVE CONSEQUENCES; BUT EVEN IF I DIDN'T THINK  
4 THAT, CONGRESS HAS DIRECTED ME TO CONSIDER THE NEED FOR A  
5 JUST PUNISHMENT IN THE CASE. IN OTHER WORDS, CONGRESS  
6 INJECTED INTO THIS AN ELEMENT OF RETRIBUTION, PUNISHMENT.

7 I'M ALSO REQUIRED TO CONSIDER THE NEED TO  
8 AFFORD ADEQUATE DETERRENCE TO CRIMINAL CONDUCT. WHEN I  
9 CAME INTO THE COURTROOM TODAY, I PROBABLY WOULD HAVE  
10 CONCLUDED THAT THE MERE FACT OF BEING CHARGED WITH THESE  
11 FELONY OFFENSES, THE MERE POSSIBILITY OF STANDING BEFORE  
12 THIS COURT FACING A POTENTIAL LIFE SENTENCE, ALL OF THE  
13 ATTENDANT EMBARRASSMENT AND LIKELY LOSS OF PROFESSIONAL  
14 LICENSES AND THAT SORT OF THING, THAT THOSE CONSEQUENCES,  
15 THOSE COLLATERAL CONSEQUENCES MIGHT BE ENOUGH TO DETER  
16 YOU. I'M UNCERTAIN OF THAT AFTER LISTENING TO YOUR  
17 STATEMENT, BUT I'LL GIVE YOU THE BENEFIT OF THE DOUBT; AND  
18 I'LL AT LEAST SAY THIS, SPECIFIC DETERRENCE, THAT IS  
19 DETERRENCE DIRECTED TO YOU, IS A LESS SIGNIFICANT FACTOR  
20 IN THIS CASE THAN IS GENERAL DETERRENCE.

21 GENERAL DETERRENCE GOES, FRANKLY, TO THE  
22 MESSAGE THAT'S SENT BY THIS COURT TO OTHER PEOPLE WHO ARE  
23 IN SIMILAR POSITIONS OF TRUST WITH THEIR EMPLOYERS, WHO  
24 HAVE ACCESS TO THESE KINDS OF TRADE SECRETS, AND THE COURT  
25 CANNOT BE A PARTY, IN MY VIEW, TO SENDING ANY KIND OF A

1 MESSAGE THAT THAT'S NOT A SERIOUS OFFENSE IF YOU POSSESS  
2 THOSE OR STEAL THEM; AND WHEN THOSE WERE INTENDED TO BE  
3 PROVIDED TO AND SOME EFFORT WAS MADE TO PROVIDE THEM TO A  
4 FOREIGN ENTITY, I THINK THE NEED FOR GENERAL DETERRENCE IS  
5 EVEN GREATER IN THE CASE. NOW, OF COURSE, DETERMINING THE  
6 AMOUNT OF IMPRISONMENT THAT'S REQUIRED TO PROVIDE A  
7 DETERRENT EFFECT IS A MORE DIFFICULT QUESTION.

8 TO PROVIDE YOU WITH NEEDED EDUCATIONAL OR  
9 VOCATIONAL TRAINING, MEDICAL CARE OR OTHER CORRECTIONAL  
10 TREATMENT IN THE MOST EFFECTIVE MANNER IS ANOTHER FACTOR  
11 I'M TOLD TO CONSIDER. NOBODY HAS ARGUED THAT THAT'S  
12 REALLY A FACTOR IN THIS CASE.

13 GOING BACK TO 3553(A)(6), AS I SAID TO YOU  
14 EARLIER, I AM DIRECTED TO AVOID UNWARRANTED SENTENCE  
15 DISPARITIES AMONG DEFENDANTS WITH SIMILAR RECORDS WHO HAVE  
16 BEEN CONVICTED OF SIMILAR CONDUCT; IN OTHER WORDS,  
17 UNIFORMITY IN SENTENCING.

18 NOW, BOTH PARTIES HAVE CITED TO THE COURT  
19 VARIOUS OTHER CASES IN OTHER JURISDICTIONS SO THAT THE  
20 COURT CAN COMPARE, FRANKLY, THE POTENTIAL OUTCOME IN THIS  
21 CASE WITH WHAT HAPPENED IN THOSE OTHER CASES. THE SIXTH  
22 CIRCUIT, OF COURSE, HAS MADE IT VERY CLEAR THAT THOSE ARE  
23 NOT THE KIND OF DISPARITIES THAT THE COURT NEEDS TO  
24 CONSIDER WITH RESPECT TO 3553(A)(6).

25 THE ONLY DISPARITY THAT I AM TO CONSIDER IS

1 WHETHER THERE IS A NATIONWIDE DISPARITY OR NOT; AND, YET,  
2 I'M FREE, IF I CHOOSE TO, AT LEAST IN THE SIXTH CIRCUIT,  
3 TO CONSIDER YOUR CASE IN COMPARISON WITH ANOTHER SPECIFIC  
4 CASE; BUT THE THING THAT MAKES THAT DIFFICULT IS THAT I  
5 DON'T KNOW ALL THE CIRCUMSTANCES OF THOSE OTHER CASES. I  
6 DON'T KNOW WHAT THE LOSS AMOUNT WAS NECESSARILY, I DON'T  
7 KNOW HOW IT WAS CALCULATED, I DON'T KNOW WHETHER THERE WAS  
8 A REDUCTION IN OFFENSE LEVEL FOR ACCEPTANCE OF RESPONSIBILITY,  
9 I DON'T KNOW WHETHER THERE WAS A MOTION MADE BY  
10 THE GOVERNMENT TO REDUCE THE OFFENSE LEVEL BASED ON  
11 COOPERATION, I DON'T KNOW WHAT SPECIFIC OFFENSE CHARACTERISTICS  
12 WERE APPLIED IN THE CASE; AND BECAUSE I DON'T  
13 KNOW THAT INFORMATION, IT MAKES A COMPARISON OF INDIVIDUAL  
14 CASES NOT VERY HELPFUL. I WILL SAY THAT THE ONE CASE THAT  
15 SEEMS TO BE MOST LIKE THIS ONE RESULTED IN A VERY  
16 SIGNIFICANT SENTENCE, BUT THERE IS NOT ONE THAT'S EXACTLY  
17 LIKE THIS.

18 I'M ALSO REQUIRED UNDER ADVISORY GUIDELINES TO  
19 CONSIDER, FIRST OF ALL, THE NATURE AND CIRCUMSTANCES OF  
20 THE OFFENSE AND YOUR HISTORY AND CHARACTERISTICS. YOUR  
21 INVOLVEMENT IN THIS OFFENSE IS BASED ON THE RECORD BEFORE  
22 THE COURT, WHAT WAS FOUND BY THE JURY. THAT'S UNFORTUNATE.  
23 THINGS THAT YOU'VE TOLD ME TODAY ABOUT NOT WRITING  
24 ANY OF THESE APPLICATIONS OR DOCUMENTS, ABOUT NOT SIGNING  
25 THE APPLICATION, ABOUT IN FACT REJECTING OR DISAPPROVING

1 OF BUSINESS PLANS OR PROJECT PLANS OR THAT SORT OF THING,  
2 NONE OF THAT IS IN THE RECORD. EVEN IF IT HAD BEEN IN THE  
3 RECORD BEFORE THE JURY, I'M NOT AT ALL CERTAIN THAT IT  
4 WOULD HAVE MADE ANY DIFFERENCE IN LIGHT OF THE OTHER  
5 PROOF.

6 YOU INDICATE TO ME THAT THERE SHOULD BE, I  
7 CAN'T REMEMBER THE NAME, WAS IT WECHAT MESSAGES, SHOWING  
8 YOUR DISAPPROVAL OR YOUR REJECTION OF THOSE PLANS, AND YET  
9 NONE HAS EVER BEEN PRODUCED. YOU'VE NOT POINTED TO ANY-  
10 THING IN THE GOVERNMENT'S DISCOVERY THAT SUGGESTS THAT  
11 THAT'S ACTUALLY WHAT HAPPENED IN THE CASE.

12 YOUR PERSONAL HISTORY AND CHARACTERISTICS MAY  
13 BE THE THING THAT GIVES ME THE MOST PAUSE HERE. IF YOUR  
14 STORY UP TO THIS POINT SIMPLY ENDED WITH YOU LEAVING  
15 COCA-COLA OR EASTMAN WITHOUT TAKING THOSE FILES, THEN I  
16 WOULD SAY THAT YOU HAVE BEEN THE IDEAL PERSON FOR  
17 NATURALIZED CITIZENSHIP IN THIS COUNTRY. YOU TOOK ADVAN-  
18 TAGE OF THE OPPORTUNITIES, YOU GOT AN EDUCATION, YOU  
19 WORKED AT PRODUCTIVE JOBS, YOU MADE A CONTRIBUTION TO YOUR  
20 EMPLOYERS, YOU MADE A CONTRIBUTION TO THE SCIENCE; AND IF  
21 IT STOPPED RIGHT THERE, I'D BE PROUD TO SAY THAT I'M PROUD  
22 OF YOU FOR ACCOMPLISHING THOSE THINGS, BUT IT DOESN'T STOP  
23 THERE. WHY SOMEBODY WHO HAS REALIZED THE AMERICAN DREAM,  
24 SOMEBODY WHO HAS ACHIEVED THE KIND OF PROFESSIONAL  
25 DISTINCTION YOU HAVE ACHIEVED, WOULD HAVE THESE STOLEN

1       TRADE SECRETS IS HARD TO EXPLAIN.

2                       YOU'RE SOMEWHAT OF A SYMPATHETIC DEFENDANT.

3       YOU'RE SLIGHT IN BUILD; JUST BY LOOKING AT YOU, YOU'RE A  
4       LITTLE BIT SYMPATHETIC. ON THE OTHER HAND, YOU ARE A VERY  
5       INTELLIGENT PERSON. AND I WOULD SUGGEST TO YOU, DR. YOU,  
6       THAT EITHER YOU'RE JUST INTENTIONALLY LYING TO THE COURT  
7       OR YOU HAVE DELUDED YOURSELF INTO BELIEVING ALL THAT  
8       YOU'VE TOLD ME THIS MORNING BECAUSE ALL OF THE EVIDENCE IN  
9       THE CASE INDICATES OTHERWISE.

10                    I'M ALSO REQUIRED TO CONSIDER ONE LAST FACTOR,  
11       AND THAT IS THE NEED TO PROVIDE RESTITUTION TO ANY  
12       VICTIMS; AND THAT'S NOT REALLY A MAJOR CONSIDERATION HERE  
13       SIMPLY BECAUSE THERE IS A SMALL REQUEST FOR RESTITUTION  
14       FROM ONE OF THE AFFECTED COMPANIES HERE, A LITTLE BIT OVER  
15       \$11,000, AND YOU DON'T OBJECT TO THAT, SO I'LL ORDER THAT  
16       AS PART OF THE FINAL JUDGMENT IN THE CASE.

17                    DR. YOU, I WOULD ULTIMATELY LIKE TO IMPOSE A  
18       SENTENCE HERE THAT GIVES YOU SOME HOPE OF ULTIMATELY  
19       SERVING THE SENTENCE AND STILL HAVING SOME PRODUCTIVE LIFE  
20       TO LIVE. THE IDEA OF IMPOSING WHAT MIGHT AMOUNT TO A LIFE  
21       SENTENCE IN THE CASE DOES NOT APPEAL TO ME, AT LEAST  
22       EMOTIONALLY. ON THE OTHER HAND, THERE IS THAT UNEXPLAINED  
23       TRANSFER OF THESE TRADE SECRETS TO ANOTHER DEVICE THAT HAS  
24       NOT BEEN ACCOUNTED FOR.

25                    I BELIEVE IT WAS THE EASTMAN VICTIM IMPACT



1 STATEMENT THAT EXPRESSED CONSIDERABLE CONCERN ABOUT THE  
2 FACT THAT YOU MIGHT BE RELEASED FROM PRISON. IT WAS  
3 CERTAINLY ONE OF THEM. I MAY HAVE MIXED IT UP WITH  
4 ANOTHER ONE, BUT I BELIEVE IT WAS THE EASTMAN LETTER THAT  
5 EXPRESSED CONCERN ABOUT YOU BEING ABLE TO BE RELEASED AND  
6 THEN HAVE ACCESS TO THAT SOMEHOW.

7 SO I HAVE TO TAKE ALL OF THAT, DR. YOU, CON-  
8 sider IT ALL TOGETHER, AND ULTIMATELY ARRIVE AT A SENTENCE  
9 THAT IS SUFFICIENT BUT NOT GREATER THAN NECESSARY. ONE  
10 THING THAT IS CLEAR TO ME, A SENTENCE OF 36 MONTHS, THAT  
11 IS TIME SERVED, IS NOT SUFFICIENT IN THIS CASE. TO IMPOSE  
12 SUCH A SENTENCE, AS YOU REQUEST, WOULD IN MY VIEW DIMINISH  
13 THE SERIOUSNESS OF THIS OFFENSE IN THE PUBLIC'S MIND. IT  
14 WOULD, IN FACT, UNDERCUT THE NEED FOR DETERRENCE, THE NEED  
15 FOR RESPECT FOR THE LAW, AND SO I CAN'T DO THAT.

16 THE THING THAT I'M DEBATING IS WHETHER OR NOT  
17 IT'S NECESSARY TO IMPOSE THE 240 MONTH SENTENCE ADVOCATED  
18 BY THE GOVERNMENT TO ACCOMPLISH THOSE PURPOSES. I HAVE  
19 CONCLUDED IT'S NOT, SO I'M GOING TO VARY FROM THE  
20 GUIDELINE RANGE AND FROM THE REQUESTED SENTENCE BY THE  
21 GOVERNMENT, BUT NOT IN A WAY THAT I SUSPECT WILL PLEASE  
22 YOU BECAUSE I THINK THERE HAS TO BE, FOR THE REASONS I'VE  
23 STATED, A VERY SIGNIFICANT SENTENCE IMPOSED IN THIS CASE.

24 HAVING CONSIDERED THE NATURE AND CIRCUMSTANCES  
25 OF THE OFFENSE, YOUR HISTORY AND CHARACTERISTICS, THE

1 ADVISORY GUIDELINE RANGE WHICH APPLIES TO THIS CASE, AS  
2 WELL AS ALL OF THE OTHER FACTORS LISTED IN TITLE 18,  
3 UNITED STATES CODE, SECTION 3553(A), IT IS PURSUANT TO THE  
4 SENTENCING REFORM ACT OF 1984 THE JUDGMENT OF THIS COURT  
5 THAT THE DEFENDANT, XIAORONG YOU, IS HEREBY COMMITTED TO  
6 THE CUSTODY OF THE BUREAU OF PRISONS TO BE IN PRISON FOR A  
7 TERM OF 120 MONTHS AS TO EACH OF COUNTS 1 THROUGH 9 TO BE  
8 SERVED CONCURRENTLY.

9 LET ME MAKE SURE I'VE GOT THE STATUTORY  
10 MAXIMUMS IN FRONT OF ME.

11 I ACTUALLY SAID 1 THROUGH 9, I SHOULD HAVE SAID  
12 1 THROUGH 8. A SENTENCE OF 168 MONTHS AS TO COUNT 9 AND  
13 10, AND A SENTENCE OF 160 MONTHS AS TO COUNT 11, TO BE  
14 SERVED CONCURRENTLY TO EACH OTHER AND TO THE SENTENCES  
15 IMPOSED IN COUNTS 1 THROUGH 8 -- DID I GET THAT RIGHT,  
16 MS. JOSEPH -- FOR A NET EFFECTIVE SENTENCE OF 166 MONTHS.

17 PROBATION OFFICER JOSEPH: DID YOU SAY 120 FOR  
18 COUNTS 1 THROUGH 8, AND THEN -- I THOUGHT YOU SAID 168,  
19 DID YOU SAY 166?

20 THE COURT: I SAID 168. I MEANT TO SAY 168.

21 THE CLERK: YES, THAT'S WHAT YOU SAID, YOUR  
22 HONOR.

23 THE COURT: WHICH IS, JUST SO THE RECORD IS  
24 CLEAR, 14 YEARS.

25 PROBATION OFFICER JOSEPH: FOR COUNTS 9 AND 10?

1 THE COURT: FOR COUNTS 9, 10 AND 11.

2 PROBATION OFFICER JOSEPH: AND 11, OKAY.

3 THE COURT: ALL RIGHT, NET EFFECTIVE SENTENCE  
4 OF 168 MONTHS.

5 IT IS FURTHER ORDERED THAT YOU SHALL PAY A FINE  
6 IN THE AMOUNT OF \$200,000, AND INTEREST IS WAIVED ON THAT  
7 FINE.

8 THE COURT MAY ENFORCE THE FULL AMOUNT OF THE  
9 FINE ORDERED AT ANY TIME PURSUANT TO TITLE 18, UNITED  
10 STATES CODE, SECTIONS 3612 AND 3613.

11 I WILL RECOMMEND THAT YOU RECEIVE A COMPLETE  
12 PHYSICAL HEALTH EVALUATION AS WELL AS A MENTAL HEALTH  
13 EVALUATION AND ANY NEEDED TREATMENT WHILE IN THE CUSTODY  
14 OF THE BUREAU OF PRISONS.

15 UPON RELEASE FROM IMPRISONMENT, YOU SHALL BE  
16 PLACED ON SUPERVISED RELEASE FOR A TERM OF 3 YEARS AS TO  
17 EACH COUNT TO RUN CONCURRENTLY FOR A NET EFFECTIVE TERM OF  
18 3 YEARS.

19 WHILE ON SUPERVISED RELEASE YOU SHALL NOT  
20 COMMIT ANOTHER FEDERAL, STATE OR LOCAL CRIME. YOU MUST  
21 NOT UNLAWFULLY POSSESS AND YOU MUST REFRAIN FROM THE USE  
22 OF ANY CONTROLLED SUBSTANCE.

23 YOU MUST COMPLY WITH THE STANDARD CONDITIONS  
24 THAT HAVE BEEN ADOPTED BY THIS COURT IN LOCAL RULE 83.10.  
25 IN PARTICULAR, YOU MUST NOT OWN, POSSESS OR HAVE ACCESS TO

1 A FIREARM, ANY AMMUNITION, A DESTRUCTIVE DEVICE OR ANY  
2 DANGEROUS WEAPON.

3 A MANDATORY DRUG TESTING CONDITION IN THIS CASE  
4 IS SUSPENDED BASED ON THE COURT'S DETERMINATION THAT YOU  
5 POSE A LOW RISK OF FUTURE SUBSTANCE ABUSE.

6 YOU SHALL COOPERATE IN THE COLLECTION OF DNA AS  
7 DIRECTED.

8 IN ADDITION, YOU SHALL COMPLY WITH THE FOLLOW-  
9 ING SPECIAL CONDITIONS: FIRST, YOU SHALL PARTICIPATE IN A  
10 PROGRAM OF MENTAL HEALTH TREATMENT AS DIRECTED BY THE  
11 PROBATION OFFICER UNTIL SUCH TIME AS YOU ARE RELEASED FROM  
12 THE PROGRAM BY THE PROBATION OFFICER. YOU MUST WAIVE ALL  
13 RIGHTS TO CONFIDENTIALITY REGARDING MENTAL HEALTH  
14 TREATMENT IN ORDER TO ALLOW RELEASE OF INFORMATION TO THE  
15 SUPERVISING UNITED STATES PROBATION OFFICER AND TO  
16 AUTHORIZE OPEN COMMUNICATION BETWEEN THE PROBATION OFFICER  
17 AND THE MENTAL HEALTH TREATMENT PROVIDER.

18 SECOND, YOU SHALL SUBMIT YOUR PERSON, PROPERTY,  
19 HOUSE, RESIDENCE, VEHICLE, PAPERS, OR OFFICE TO A SEARCH  
20 CONDUCTED BY A UNITED STATES PROBATION OFFICER OR  
21 DESIGNEE. FAILURE TO SUBMIT TO A SEARCH MAY BE GROUNDS  
22 FOR REVOCATION OF RELEASE.

23 YOU MUST WARN ANY OTHER OCCUPANTS THAT THE  
24 PREMISES MAY BE SUBJECT TO SEARCH PURSUANT TO THIS  
25 CONDITION. AN OFFICER MAY CONDUCT A SEARCH PURSUANT TO

1 THIS CONDITION ONLY WHEN REASONABLE SUSPICION EXISTS THAT  
2 YOU HAVE VIOLATED A CONDITION OF YOUR SUPERVISION AND THAT  
3 THE AREAS TO BE SEARCHED CONTAIN EVIDENCE OF THE  
4 VIOLATION. ANY SEARCH MUST BE CONDUCTED AT A REASONABLE  
5 TIME AND IN A REASONABLE MANNER.

6 THIRD, YOU SHALL PAY ANY FINANCIAL PENALTY THAT  
7 IS IMPOSED BY THIS JUDGMENT AS A CONDITION OF SUPERVISED  
8 RELEASE. ANY AMOUNT THAT REMAINS UNPAID AT THE COMMENCE-  
9 MENT OF THE TERM OF SUPERVISED RELEASE SHALL BE PAID ON A  
10 MONTHLY BASIS AT THE AMOUNT OF AT LEAST 10 PERCENT OF YOUR  
11 NET MONTHLY INCOME.

12 FOURTH, YOU SHALL PROVIDE THE PROBATION OFFICER  
13 WITH ACCESS TO ANY REQUESTED FINANCIAL INFORMATION.

14 FIFTH, YOU SHALL NOT INCUR NEW CREDIT CHARGES  
15 ON EXISTING ACCOUNTS OR APPLY FOR ADDITIONAL LINES OF  
16 CREDIT WITHOUT PERMISSION FROM THE PROBATION OFFICER UNTIL  
17 THE FINE HAS BEEN PAID IN FULL. IN ADDITION, YOU SHALL  
18 NOT ENTER INTO ANY CONTRACTUAL AGREEMENTS WHICH OBLIGATE  
19 FUNDS WITHOUT THE PERMISSION OF THE PROBATION OFFICER.

20 AND AS A FINAL CONDITION, IF IT IS IN YOUR  
21 POSSESSION, YOU MUST SURRENDER TO THE GOVERNMENT ANY  
22 DEVICE TO WHICH THESE TRADE SECRETS HAVE BEEN TRANSFERRED.

23 IT IS FURTHER ORDERED THAT YOU SHALL PAY TO THE  
24 UNITED STATES A SPECIAL ASSESSMENT OF \$1,100, THAT'S \$100  
25 PER COUNT OF CONVICTION, WHICH IS MANDATORY PURSUANT TO

1 TITLE 18, UNITED STATES CODE, SECTION 3013, WHICH SHALL BE  
2 DUE IMMEDIATELY.

3 TITLE 18, UNITED STATES CODE, SECTIONS 3565(B)  
4 AND 3583(G) REQUIRE MANDATORY REVOCATION OF SUPERVISED  
5 RELEASE FOR POSSESSION OF A CONTROLLED SUBSTANCE OR A  
6 FIREARM OR FOR REFUSAL TO COMPLY WITH DRUG TESTING.

7 NOW, THERE IS, OF COURSE, BEFORE THE COURT A  
8 REQUEST FOR RESTITUTION FROM -- I'M SORRY, LET ME GET BACK  
9 TO THE RIGHT PLACE -- TOYOCEM COMPANY LIMITED IN THE  
10 AMOUNT OF \$11,494. GIVEN THAT THERE IS NO OBJECTION TO  
11 THAT, THE COURT WILL ORDER RESTITUTION TO THAT ENTITY IN  
12 THAT AMOUNT.

13 THE CLERK: YOUR HONOR, IS INTEREST WAIVED ON  
14 THE RESTITUTION AS WELL?

15 THE COURT: THAT'S A GOOD QUESTION. I'VE  
16 WAIVED THE INTEREST ON THE FINE. GIVEN THE LENGTH OF THE  
17 SENTENCE, I THINK IT APPROPRIATE TO WAIVE ANY INTEREST ON  
18 THE RESTITUTION AS WELL.

19 THE CLERK: YES, YOUR HONOR.

20 THE COURT: PURSUANT TO RULE 32 OF THE FEDERAL  
21 RULES OF CRIMINAL PROCEDURE, THE COURT ADVISES YOU THAT  
22 YOU MAY HAVE THE RIGHT TO APPEAL YOUR CONVICTION OR THE  
23 SENTENCE IMPOSED IN THE CASE. A NOTICE OF APPEAL MUST BE  
24 FILED WITHIN 14 DAYS OF THE ENTRY OF THE JUDGMENT. IF YOU  
25 REQUEST AND SO DESIRE, THE CLERK OF THE COURT CAN PREPARE

1 AND FILE THE NOTICE OF APPEAL FOR YOU.

2 I WILL RECOMMEND TO THE BUREAU OF PRISONS THAT  
3 YOU RECEIVE CREDIT FOR ALL TIME SERVED SINCE YOUR ARREST;  
4 AND I JOTTED THAT DATE DOWN, I CAN'T SPOT IT AT THE  
5 MOMENT. MS. JOSEPH, DO YOU HAVE THAT IN FRONT OF YOU?

6 PROBATION OFFICER JOSEPH: YES, YOUR HONOR.

7 MR. SHIPLEY: FEBRUARY 14TH, YOUR HONOR.

8 THE COURT: FEBRUARY 14, 2000 -- WAS IT 19?

9 MR. SHIPLEY: YES.

10 THE COURT: 2019, I'LL RECOMMEND CREDIT FOR  
11 TIME SERVED SINCE THAT DATE.

12 I'LL ALSO RECOMMEND A FACILITY IF YOU WANT ME  
13 TO DO THAT.

14 MR. SHIPLEY: YES, YOUR HONOR. IF WE COULD,  
15 FCI ALICEVILLE OR IN THE ALTERNATIVE FCI MARIANNA.

16 THE COURT: ALL RIGHT. I'LL MAKE THOSE  
17 RECOMMENDATIONS TO THE BUREAU OF PRISONS THAT YOU BE  
18 DESIGNATED TO EITHER THE BOP FACILITY FCI ALICEVILLE OR TO  
19 FCI MARIANNA.

20 DOES EITHER PARTY HAVE ANY OBJECTION TO THE  
21 SENTENCE JUST PRONOUNCED BY THE COURT THAT HAS NOT BEEN  
22 PREVIOUSLY RAISED?

23 MR. SHIPLEY: NO, YOUR HONOR.

24 THE COURT: MR. WALCZEWSKI?

25 MR. WALCZEWSKI: NO OBJECTION, YOUR HONOR; BUT

1 I BELIEVE THAT PURSUANT TO RULE 32.2(B)(4)(B) THERE NEEDS  
2 TO BE AN ORAL ANNOUNCEMENT OF FORFEITURE.

3 THE COURT: YES, I MEANT TO DO THAT AS WELL.

4 YOU WILL FORFEIT AS PART OF THIS JUDGMENT THE  
5 ITEMS SPECIFIED IN THE PRELIMINARY ORDER OF FORFEITURE  
6 WHICH WAS ENTERED IN THIS COURT ON -- IF YOU ALL WILL  
7 EXCUSE ME JUST A LITTLE BIT. I WAS OUT SICK LAST WEEK AND  
8 I HAVE A LOT OF NOTES ON THIS CASE, WHAT WAS THE DATE OF  
9 THAT ORDER?

10 MR. WALCZEWSKI: NOVEMBER 30, 2021, DOCUMENT  
11 389.

12 THE COURT: ALL RIGHT. THAT WILL BE INCLUDED  
13 AS PART OF THE JUDGMENT AS WELL; AND WHEN A FINAL ORDER OF  
14 FORFEITURE IS SUBMITTED, I WILL SIGN THAT FINAL FORFEITURE  
15 ORDER AS WELL.

16 ANY OBJECTIONS, MR. SHIPLEY, FROM THE  
17 DEFENDANT?

18 MR. SHIPLEY: NO OBJECTIONS, YOUR HONOR.

19 THE COURT: ALL RIGHT. DR. YOU, I WAS SINCERE  
20 WHEN I TOLD YOU THAT SENTENCING IN A CRIMINAL CASE IS THE  
21 MOST UNPLEASANT THING I DO, IT'S THE MOST DIFFICULT THING  
22 I DO, AND YOURS WAS NO DIFFERENT. I WISH NEITHER YOU NOR  
23 I WERE IN A POSITION OF HAVING TO HAVE THAT SENTENCE  
24 IMPOSED, BUT I DO WISH YOU THE BEST. GOOD LUCK TO YOU.

25 THE DEFENDANT: THANK YOU.



1 THE COURT: MR. SHIPLEY, ARE YOU GOING TO FILE  
2 A NOTICE OF APPEAL?

3 MR. SHIPLEY: YES, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 ALL RIGHT. ANYTHING ELSE BEFORE WE ADJOURN?

6 ALL RIGHT. THANK YOU ALL VERY MUCH. THIS HAS  
7 BEEN A LONG CASE, BUT I APPRECIATE THE EFFORT ALL OF YOU  
8 HAVE MADE. THANK YOU VERY MUCH.

9 LET'S TAKE A SHORT RECESS, AND I'LL GET  
10 MS. BOLTON'S PLEA.

11 (PROCEEDINGS ARE CONCLUDED AT 11:50 A.M.)

12 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
13 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

14  
15 KAREN J. BRADLEY/S  
16 SIGNATURE OF COURT REPORTER

07/13/2022  
DATE